

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/160/2023

2nd May, 2023

Order

In the matter of Mr. Vedagiri Venkata Krishnamurthy, Insolvency Professional (IP) under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. COMP-11013/1/2023-IBBI/721/317 dated 01.03.2023 issued to Mr. Vedagiri Venkata Krishnamurthy, R/o #197, 6th A Main, 16th Cross, JP Nagar 4th Phase, Bangalore, Karnataka- 560078 who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IIP-ICAI) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00905/2017-2018/11505.

1. Background

- 1.1. The Hon'ble NCLT, Amravati Bench (AA) *vide* order dated 01.11.2021 commenced the liquidation process of the Sembmarine Kakinada Limited (CD) and appointed Mr. Vedagiri Venkata Krishnamurthy as the liquidator.
- 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 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation in the liquidation proceeding of the CD. In compliance with regulation 8(1) of the Investigation Regulations, IA served notice to Mr. Vedagiri Venkata Krishnamurthy on 26.12.2022. Pursuant to the said notice, Mr. Vedagiri Venkata Krishnamurthy replied *vide* email dated 04.01.2021 and 23.01.2023. Thereafter, IA submitted the Investigation Report (IR) on 01.02.2023.
- 1.3. The IBBI issued the SCN to Mr. Vedagiri Venkata Krishnamurthy on 01.03.2023, based on the findings in the investigation report in respect of his role as liquidator of the CD and material available on record. Mr. Vedagiri Venkata Krishnamurthy submitted his reply to SCN *vide* email dated 14.03.2023.
- 1.4. The IBBI referred the SCN, response of Mr. Vedagiri Venkata Krishnamurthy 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. Vedagiri Venkata Krishnamurthy availed opportunity of personal hearing through virtual mode before the DC on 11.04.2023 where he was represented by Mr. Pradeep Joy, Advocate.

1.5. The DC has considered the SCN, the reply to SCN, submissions of Mr. Vedagiri Venkata Krishnamurthy, and other material available on record and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings

The contravention alleged in the SCN and Mr. Vedagiri Venkata Krishnamurthy's written and oral submissions thereof are summarized as under:

3. Contravention-I

Improper Conduct of Auction Process

3.1 The Board has observed on perusal of third Stakeholder Consultation Committee (SCC) meeting held on 10.02.2022 that during the first three months of the liquidation process, Mr. Vedagiri Venkata Krishnamurthy has conducted three rounds of auctions to sell the CD as a going concern. However, all three attempts to auction to sell the CD as going concern failed.

3.2 It is further noted from the minutes of first SCC meeting held on 07.12.2022 that in the eventuality of failure of first auction process which was still underway at the time of conduct of first SCC meeting, Mr. Vedagiri Venkata Krishnamurthy proposed the following dates for conducting second and third auctions:

Auction	Notice Date	Auction date
2	13.01.2022	20.01.2022
3	21.01.2022	28.01.2022

3.3 However, on perusal of auction notices hosted by Mr. Vedagiri Venkata Krishnamurthy on the website of the Board, following is observed with respect to date of auction notices, last date of Earnest Money Deposit (EMD) submission and reduction in reserve prices for sale as going concern.

Particulars	First auction	Second auction	Third auction
Notice Date	18.11.2021	18.01.2022	25.01.2022
Last EMD submission date	11.01.2022	18.01.2022	25.01.2022
Auction Date	12.01.2022	20.01.2022	28.01.2022
Reserve Price (Amt in lakhs)	Rs. 23,669.35	Rs. 21,302.41	Rs. 19,172.17
% Reduction in price	-	10%	10%

- 3.4 The Board has observed that instead of 7 days' time between notice of auction and auction date proposed by Mr. Vedagiri Venkata Krishnamurthy in the first SCC meeting, he provided only two and three days respectively between notice and auction as per the auction notice hosted on the Board's website. Further, it is also seen that date of notice and date of submission of EMD in respect of second and third notice was kept as same by him making it impossible for any potential buyers to submit EMD within time and resultantly making the whole process of auction infructuous. His conduct of keeping the date of submission of EMD as the same as the date of notice and giving only two days to participate in the auction process made the process infructuous resulting in unwarranted reduction of reserve price.
- 3.5 In view of the above, the Board is of the *prima facie* view that Mr. Vedagiri Venkata Krishnamurthy has *inter alia* violated section 35(1)(d) of the Code, regulation 33 read with clauses 1(1), 1(6) & 1(9) of Schedule I to the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) read with clauses 1, 3, 14 and 15 of the Code of Conduct as specified in the First Schedule of IP Regulations (Code of Conduct).

Submissions by Mr. Vedagiri Venkata Krishnamurthy

- 3.6 Mr. Vedagiri Venkata Krishnamurthy submitted that due to the termination of the lease deed of the CD, during CIRP/Liquidation none of the bidders were willing to place any bid acceptable to CoC for acquiring the CD as a going concern. The period under consideration for liquidation as a going concern is 90 days starting from 01.11.2021, i.e., the liquidation commencement date (LCD). The said period was a very challenging period due to Covid-19 pandemic, lockdown, and related aspects.
- 3.7 Considering the one-year timeline for the liquidation process and to sell the CD or its business within 90 days from the LCD, the strategy discussed with SCC was to have the going concern sale option pursued for 90 days before we proceed with a piecemeal asset sale (after 90 days). The only window available to the liquidator was between 60 and 90 days from LCD for exclusive going concern sale. Therefore, he conducted expedited auctions after due discussion with SCC. As per regulation 31A(b), the liquidator needs to be advised by SCC on fixing the reserve price and sale for the same under regulation 32. After the formation of SCC, the liquidator had only a limited time of 30 days available to conduct an auction by sale as a going concern. Soon after completing the first auction on 12.01.2022, the second auction notice was issued on 18.01.2022 (instead of 13.01.2022 as suggested in the SCC meeting) as there were holidays on account of Sankranti on 14.01.2022 & 15.01.2022 and in some states, it was extended till 16.01.2022. For the third auction, the notice was issued on 25.01.2022 (instead of 21.01.2022, as suggested to SCC) due to intervening holidays, i.e., 22.01.2022 and 23.01.2022 (Saturday & Sunday). Thereafter, for the fourth auction, the notice was issued on 12.02.2022, and the fifth Auction was issued on 25.02.2022. During liquidation, the option for a going concern in discussion with the SCC was kept open, but until the day there has been no positive interest for the same.

- 3.8 Further, it is clearly set out in the minutes of the first SCC meeting of CD held on 07.01.2022 that there was a lack of interest from the investors even during the CIRP of CD. In the first auction of CD during its liquidation process, only one prospective bidder, namely, Ultra Dimension Private Limited had submitted an Expression of Interest (Eoi) and conducted a site visit. As a matter of fact, the aforesaid prospective bidder, namely, Ultra dimension Private Limited subsequently did not participate in the first auction. Hence, he proposed the tentative dates of subsequent auctions in the event if the first auction failed and given the facts and circumstances of the case, it was necessary to be ready with a backup plan to address the eventuality of failure of first auction.
- 3.9 He submitted that as regards the reduction in reserve price in the subsequent auctions, the same was done in consultation and consensus with the members of SCC. Moreover, Liquidation Regulations (amended up to 30 09.2021, as it stood then), in Schedule I (1) (4A) clearly provides that where an auction fails at the reserve price, liquidator may reduce the reserve price by up to twenty-five percent of such value to conduct subsequent auction, whereas in the present case, the reduction in reserve price was by ten percent from the first auction to the second auction. Furthermore, Schedule I (4B) provides that where an auction fails at a reduced price under clause (4A), the reserve price in subsequent auctions may be further reduced by not more than ten percent at a time which is what was exactly done from the second auction to the third auction. Further, the Auction timelines under the Schedule I of Liquidation Regulations (Mode of Sale) came into force with effect from 16.09.2022 in the amended Liquidation Regulations and there were no timelines specified in the regulations prior to 16.09.2022.
- 3.10 With regards to the allegation that as against seven days' time between notice of auction and auction date as proposed in the first SCC meeting, only two and three days respectively were provided for the 2nd and 3rd auction, he submitted that the proposal for seven days' time was only a suggestion and the whole process being dynamic, flexibility is required in reducing the number of days, more particularly, when the time deadline for sale as going concern was expiring on 29.01.2022. Furthermore, the Liquidation Regulations (amended up to 30.09.2021, as it stood then, at the relevant point in time) did not specifically provide for maintaining any standard timeline gap between the date of publication of auction notice and the last date of EMD submission. Timelines were provided in the amended regulations with effect from 16.09.2022. In the circumstances, he has not committed any violations by providing two- and three-days' time respectively in respect of second and third auctions.
- 3.11 With regards the allegation that in second auction and third auctions, the date of publication of auction notice and the last date of submission of EMD are one and the same, he submitted that a time period of eighteen days was remaining between the date of conducting the first auction (12.01.2022) and expiry of ninety days on 29.01.2022. As explained above, there were several intervening holidays during this 18 days' period. Moreover, he did not receive any bidder in the

second and third auctions and the aforesaid auctions failed. As such, the possibility of any *mala fide* intent or favouring any specific proposed bidder is out of question by any stretch of imagination. Therefore, allegations that, keeping the date of EMD submission the same as the date of publishing auction notice or giving only two or three days respectively to the participants for participating in the second and third auction process made the process infructuous resulting in unwarranted reduction of reserve price, are absolutely unfounded and baseless. There were no parties who have expressed their interest in participating in the subsequent two auctions fourth and fifth for which notices were issued on 12.02.2022 and 25.02.2022 even after reducing the reserve price further by 10% for sale as going concern i.e., Rs.176.72 crores and Rs.159.33 crores respectively in the fourth and fifth auctions. This clearly establishes that the inherent challenges in getting a lease extension for the land, apart from other issues, would have prevented the parties from taking part in the auction rather than the reason for giving short notice in conducting the auction process.

- 3.12 Mr. Vedagiri Venkata Krishnamurthy has denied the aforesaid allegation and submitted that he has conducted the liquidation process (including the auction process) in compliance with the provisions of the Code and rules and regulations made thereunder in a fair, transparent and bona fide manner and the best interests of the CD and all associated stakeholders. He followed the procedures contemplated in Schedule I of the Liquidation Regulations. Moreover, in the Code and the Liquidation Regulations, no time limit was specified for the auction process other than the mode of Sale as prescribed in Schedule I of Liquidation Regulations. In the circumstances, he submitted that there is no merit in the allegations.

Analysis and Findings

- 3.13 Regulation 32A (1) of Liquidation Regulations provides that where CoC has recommended sale under clause (e) or (f) of regulation 32 or where the liquidator is of the opinion that sale under clause (e) or (f) of regulation 32 shall maximise the value of the CD, he shall endeavour to first sell under the said clauses. Clauses (e) and (f) provides that the liquidator may sell CD as a going concern or the business(s) of CD as a going concern:
- 3.14 Regulation 32A (4) before substitution by notification No. IBBI/2022-23/GN/REG094, dated 16.09.2022 in Liquidation Regulations stood as follows:
- “If the liquidator is unable to sell the corporate debtor or its business under clause (e) or (f) of regulation 32 within ninety days from the liquidation commencement date, he shall proceed to sell the assets of the corporate debtor under clauses (a) to (d) of regulation 32”*
- 3.15 A combine reading of above provisions highlights that a liquidator shall endeavour to sell CD or its business as going concern and if is not able to sell the CD or its business as going concern within 90 days of LCD, he may proceed to sell the assets of CD through other means provided under clauses (a) to (d) of regulation 32 of Liquidation Regulations. The available and applicable

provisions to the liquidation of CD in hand nowhere provides for any mandatory number of auctions to be conducted within 90 days from LCD.

- 3.16 The DC accepts the submission of Mr. Vedagiri Venkata Krishnamurthy that the Liquidation Regulations, applicable to the liquidation of CD, did not specifically provide for maintaining any standard timeline gap between the date of publication of auction notice and the last date of EMD submission as the same were notified by notification IBBI/2022-23/GN/REG094, dated 16.09.2022 under Schedule-I of Liquidation Regulations. Still, it does not justify the unfair conduct of second and third auctions where the date of deposit EMD by any prospective bidder same as the date of publication of auction notice date, and giving only two days for second auction and three days for third auction to participate in the auction process. By doing so, the liquidator practically prevented the prospective bidders from depositing the EMD amount and not provided reasonable and sufficient time to the prospective bidders to evaluate the auction. The reasoning given during first SCC meeting that there was a lack of interest from the investors even during the CIRP of CD does not support conduct of auctions in such a hurried manner. The hasty conduct of second and third auction notifying same date for issue of notice and last date of submission of EMD and conducting the entire auction process in a very short period of 3-4 days, does not seem reasonable and implies mechanical approach rather than intention to find actual buyer for CD as going concern.
- 3.17 Furthermore, although the consultation with the SCC is not binding on the liquidator, reducing the auction tenure to three-four days from eight days proposed by Mr. Vedagiri Venkata Krishnamurthy himself in the 1st SCC meeting, is found unjustifiable and unacceptable. The entire conduct of auctions by the liquidator goes against the key tenet of the underlying principle of auction i.e. maximum engagement of prospective bidders by providing reasonable and sufficient time to understand the terms and conditions of the auction, fair time for inspection of goods being auctioned, and evaluate to participate in the auction process. It may be noted that the liquidator holds the liquidation estate as a fiduciary for the benefit of all the stakeholders. To ensure transparency and fairness in selling the assets of the CD, the act of liquidator should be fair and transparent and understandable bearing in mind the expectations of others and what a reasonable and informed third party would consider appropriate. Moreover, the purpose of having the provision of sale as a going concern under the Liquidation Regulations is for value maximisation. It cannot be exploited to reduce the reserve price again and again in an abrupt manner.
- 3.18 In view of the above, the DC finds that the liquidator has conducted the second and third auctions in an unfair and improper manner which made the auction process infructuous resulting in an unwarranted reduction of reserve price. Hence, the DC finds Mr. Vedagiri Venkata Krishnamurthy in violation of section 35(1)(d) of the Code, regulation 33 read with clauses 1(1), 1(6) & 1(9) of Schedule I to the Liquidation Regulations read with Clauses 1, 3, 14 and 15 of the Code of Conduct.

4. Contravention-II

Excessive fees charged by the Liquidator

- 4.1 The Board has observed that in the 24th CoC meeting, fee of Mr. Vedagiri Venkata Krishnamurthy as Liquidator was fixed at 60% of table rates specified under regulation 4 of the Liquidation Regulations subject to adjustment of monthly fee of Rs. 5 lacs payable to him for the period during which CD was kept as going concern during the liquidation period. It is however, observed on perusal of the fee computation submitted by him in his email dated 23.01.2023 that he has not adjusted Rs. 16,88,850/- (Rs. 15,47,100/- + Rs. 1,41,750/-), already paid to him and support service provider to the liquidator while calculating his fees at the rate of 60% of the table rates as has been approved by the CoC.
- 4.2 It is further noted from the computation shared *vide* email dated 23.01.2023 that he has included interest income earned against the fixed deposits in the name of CD as amount realised by him for the purpose of calculation of his fee as per table rate. As the interest income on fixed deposits accrue automatically, the same cannot be treated as amount realised by the liquidator and hence, taking this amount as realisation by liquidator for calculating his fee as liquidator is in violation of clarification provided under regulation 4(2)(b) of Liquidation Regulations.
- 4.3 In view of the above, the Board is of the *prima facie* view that he has *inter alia* violated regulation 4 of the Liquidation Regulations read with regulation 39D of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and clauses 3, 25 and 26 of the Code of Conduct.

Submissions by Mr. Vedagiri Venkata Krishnamurthy

- 4.4 Mr. Vedagiri Venkata Krishnamurthy submitted that Item 9 titled "Discussion on proposed liquidator and Liquidator Fee forming part of the minutes of the 24th meeting of the CoC of CD dated 29.07 2021, sets out that the Liquidator and his supporting team would be entitled to a consolidated fee of 60% of the indicative fee provided under regulation 4 of the Liquidation Regulations. In addition, monthly fee of Rs. 5 lakhs shall be charged till the time the CD is a going concern under the liquidation process i.e. for the first 3 months. The said monthly fee shall be adjusted from the liquidation fee calculated above. The proposed fee does not include any out-of-pocket expenses or applicable taxes. With regards to allegation that he has not adjusted Rs. 16,88,850/- (15,47,100/- + 1,41,750/-) already paid to him and supporting team while calculating the fee at the rate of 60% of the table rate in terms of regulation 4 of the Liquidation Regulation, he submitted that he and his supporting team has raised invoices for a total fee, which in line with the calculation as provided to the investigation officer, and the agreed fees of Rs. 16,88,850/- was adjusted from the total fees accrued.
- 4.5 With regards to the allegations pertaining to income earned from the interest component of fixed deposit, Mr. Vedagiri Venkata Krishnamurthy submitted that majorly the sale proceeds received

out of e-auction conducted by him were kept as fixed deposit, leading to generation of interest, which is a kind of revenue generated to the CD. Hence, the receipt of the money out of sale of the assets of the CD and creation of fixed deposit in respect of the same are actions attributable to him and hence, he is entitled to fees for realization/distribution of the same. In the facts and circumstances of the present matter, considering that AA had granted status quo on 04.07.2022 pursuant to an application filed (IA 120 of 2022) by the AP Maritime board claiming rights over the assets of CD pursuant to which the assets could not be delivered and the money could not be distributed to the stakeholders until vacation of the stay, it was by virtue of the prudence and proactive approach on his part, that he kept the money in fixed deposit. Meanwhile, he fought legal battles leading to vacation of stay subsequently. Hence, interest accrued to the CD out of fixed deposits is also an amount realized by him, considering that it is liquidator himself who has sold the assets in question and prudently, parked the money in the fixed deposit, which led to generation of income to the CD. Hence, the decision of the Liquidator to keep the monies in fixed deposit led to increase in liquidation estate and helped meet the liquidation costs.

Analysis and Findings

4.6 On perusal of the records submitted by Mr. Vedagiri Venkata Krishnamurthy, the DC accepts his submission.

5. Order

5.1 In view of the forgoing discussion, the DC finds that Mr. Vedagiri Venkata Krishnamurthy has conducted the second and third auctions in improper manner by fixing the same date for deposit of EMD by any prospective bidder and the date of publication of auction notice date, and giving only two days for second auction and three days for third auction to participate in the auction process. It is further noted that Mr. Vedagiri Venkata Krishnamurthy himself proposed in the 1st SCC meeting before SCC members to conduct the auction within tenure of eight days by providing seven days between the notice and auction. However, for the reasons unknown, Mr. Vedagiri Venkata Krishnamurthy reduced the proposed auction tenure of eight days to three and four days for second auction and third auction, respectively and thus, provided only two and three days between the notice and auction for second auction and third auction, respectively. His conduct of keeping the date of submission of EMD as the same as the date of notice and giving only two-three days to participate in the auction process made the auction process infructuous resulting in unwarranted reduction of reserve price.

5.2 The entire conduct of auctions by the liquidator goes against the key tenet of the underlying principle of auction i.e., maximum engagement of prospective bidders by providing reasonable and sufficient time to understand the terms and conditions of the auction, fair time for inspection of goods being auctioned, and evaluate to participate in the auction process. It may be noted that the

liquidator holds the liquidation estate as a fiduciary for the benefit of all the stakeholders. To ensure transparency and fairness in selling the assets of the CD, the act of liquidator should be fair and transparent and understandable bearing in mind the expectations of others and what a reasonable and informed third party would consider appropriate. Moreover, the purpose of having the provision of sale as a going concern under the Liquidation Regulations is for value maximisation. It cannot be exploited to reduce the reserve price again and again in an abrupt manner. Hence, Mr. Vedagiri Venkata Krishnamurthy has violated the section 35(1)(d) of the Code, regulation 33 read with clauses 1(1), 1(6) & 1 (9) of Schedule I to the Liquidation Regulations read with Clauses 1, 3, 14, and 15 of the Code of Conduct.

- 5.3 In view of unwarranted reduction of reserve price by conducting the second auction and third auction in hasty and improper manner causing substantial erosion in value of the CD, 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 imposes a penalty on Mr. Vedagiri Venkata Krishnamurthy of an amount equivalent to fifty percent of his entire fee earned (accrued/receipt) as liquidator. Since this reduced reserve price has adversely impacted the returns to the stakeholders, the DC directs Mr. Vedagiri Venkata Krishnamurthy to credit the penalty amount to the account of the CD and the same shall be distributed among stakeholders as per section 53 of the Code. The DC also directs Mr. Vedagiri Venkata Krishnamurthy that no fee shall be charged on such distribution of penalty amount among stakeholders.
- 5.4 This Order shall come into force on expiry of 30 days from the date of its issue.
- 5.5 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Vedagiri Venkata Krishnamurthy is providing his services, if any.
- 5.6 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Vedagiri Venkata Krishnamurthy is enrolled as a member.
- 5.7 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 5.8 Accordingly, the show cause notice is disposed of.

Sd/-
(Ravi Mital)
Chairperson, IBBI

Dated: 2nd May, 2023
Place: New Delhi