

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/210/2024

09<sup>th</sup> April, 2024

**Order**

**This Order disposes of the Show Cause Notice (SCN) No. COMP-11015/8/2023-IBBI/766/783 dated 03.07.2023 issued to Mr. Venkata Sivakumar, Insolvency Professional under section 219 of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 11 and 12 of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations). Mr. Venkata Sivakumar is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with registration No. IBBI/IPA-001/IP-P00184/2017-18/10852 and is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI having residential address registered with IBBI at 10/11, Dr. Subbarayan Nagar Main Road, Kodambakkam, Chennai, Tamil Nadu- 600024.**

**1. Background**

- 1.1 The Hon'ble NCLT, Chennai (AA) *vide* order dated 25.02.2019 admitted the application under section 7 of the Code, filed by IDBI Bank Limited (FC) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s The Jeypore Sugar Company Limited (Corporate Debtor/CD). The AA appointed Mr. Venkata Sivakumar as Interim Resolution Professional (IRP) of CD on the same date who was later confirmed as Resolution professional (RP). Since no resolution plan was pending before Committee of Creditors (CoC) for consideration, the AA did not extend the CIRP beyond period of 330 days and *vide* order dated 29.05.2020, it allowed liquidation of CD. Mr. Venkata Sivakumar was appointed as liquidator of CD. Subsequently, IDBI bank, one of the financial creditors of the CD, moved an application before AA, seeking the replacement of Mr. Venkata Sivakumar as liquidator on the ground that he did not possess a valid Authorisation of Assignment (AFA). The AA *vide* order dated 01.07.2022 replaced Mr. Venkata Sivakumar and appointed Mr. S Hari Karthik as liquidator.
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation.
- 1.3 Accordingly, a notice under regulation 8(1) of the Investigation Regulations was issued to IP, Mr. Venkata Sivakumar on 13.09.2022. IP submitted his written submissions *vide* email dated 15.09.2022 and dated 16.09.2022. The IA submitted its investigation report to the Board on 21.02.2023.

- 1.4 Based on the material available on record including the investigation report, the Board issued the SCN to Mr. Venkata Sivakumar on 03.07.2023 alleging contravention of various provisions.
- 1.5 The IBBI referred the SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder.
- 1.6 Mr. Venkata Sivakumar challenged the SCN before Hon'ble Madras High Court which was dismissed on 22.12.2023. Thereafter, he filed the appeal before Division Bench of Hon'ble Madras High Court which heard the matter on 19.01.2024 observing that *"We are not inclined to stall the enquiry. The enquiry may proceed on its own merits. The learned Single Judge of this Court has not decided any issue nor any finding has been arrived at conclusively. It is for the authorities to consider the case put forth by the petitioner on its own merits."*
- 1.7 Subsequently, Mr. Venkata Sivakumar submitted his reply to SCN vide email dated 24.01.2024 and availed opportunity of personal hearing through virtual mode before the DC on 25.01.2024. He further submitted written submissions on 25.01.2024.
- 1.8 The DC has considered the SCN, the reply to SCN, oral and written submissions of Mr. Venkata Sivakumar and proceeds to dispose of the SCN.

## **2. Alleged Contraventions, Submissions, Analysis and Findings**

The contravention alleged in the SCN and Mr. Venkata Sivakumar's written and oral submissions thereof are summarized as follows.

### **3. Contravention-I**

#### **I. Disclosure of Valuation of the CD to Prospective Scheme Proponent.**

- 3.1 It is observed that AA vide order dated 01.07.2022 while allowing application filed by IDBI Bank Limited for replacement of Mr. Venkata Sivakumar as liquidator of the CD and made following remarks:

*"17. In the present case, the Liquidator has stated in his reply that no stakeholder has the right to seek for replacement of Liquidator and that once the Liquidator is appointed, he cannot be removed unless there is a serious allegation of corruption. If we go by the contention as made by the Learned Liquidator, then it should be construed that the Liquidator is infallible, and this Adjudicating Authority has to simply close its eyes and let the Liquidator do whatever he wants. As to the present case of M/s Jeypore Sugar Company Limited, it is to be seen that in the previous hearings serious allegations have been made against the*

*Liquidator by the stakeholders that he has shared the valuation report with the prospective Scheme proponents and the Liquidator has also not denied the same. In reply to such a contention, the Liquidator stated that only during CIRP the RP should not share the valuation report, however during the Liquidation period there is no bar. Such statement made by the Liquidator shook the conscious of this Court.*

*18. It is an admitted fact that the Liquidator has shared the valuation Report of the Corporate Debtor with the prospective Scheme proponents which lead to the proponents quoting value on par with the valuation report. Such an act committed by the Liquidator is viewed seriously by this Tribunal. The said act of the liquidator would amount to failure to exercise due care and diligence in performance of the powers and functions and as such. it is one of the grounds on which the Liquidator can be changed.”*

3.2 Regulation 34(2) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) requires a liquidator to prepare an Asset Memorandum containing *inter alia* the details regarding the value of the asset in respect of the assets which are intended to be realized by way of sale. Further, regulation 34(5) of the Liquidation Regulations then in vogue further provided that the asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the AA.

3.3 Valuation of assets of CD constitutes important component of the Asset Memorandum and hence, the same could not be disclosed or shared with any person except with the approval of AA. However, as per the above AA’s order, Mr. Venkata Sivakumar had shared the valuation report with the prospective scheme proponents. Such action of sharing the valuation report with the prospective scheme proponents without the approval of AA, is against one of objectives of the Code which is maximisation of the value of the assets of the CD. Further, no clarification in this regard has been provided by him in reply to notice of investigation.

3.4 In view of the above, the Board held the prima facie view that he has contravened Section 35(1)(d), 208(2)(a) & (e) of the Code, Regulation 34(5) of the Liquidation Regulations, Regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clauses 1, 2, 12 and 14 of the Code of Conduct.

#### **4. Submissions by IP**

4.1 Mr. Venkata Sivakumar submitted that the AA *vide* order dated 17.11.2021 in IA No. 255 of 2021 made following observations:

*“43. The Hon'ble Supreme Court in the matter of Maharashtra Seamless Limited -Vs- Padmanabhan Venkatesh & Ors. In Civil Appeal No. 4242 of 2079 at para 27 has held that*

*the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Further, it is required to be noted that the valuation report should be treated as a confidential document and it is used as a yardstick for the CoC / Stakeholders to negotiate with the prospective Resolution Applicant / Scheme Proponents in order to maximize the assets of the Corporate Debtor. However, in the present case it is alleged by the Secured Creditors that the Liquidator has shared the valuation Report with the prospective Scheme proponents and the Liquidator has nowhere in his counter has denied the same. Hence, the apprehension of the Secured Creditors that the sharing of the draft Valuation report with the prospective Scheme proponents made them to quote the rates in line with the liquidation value seems to be plausible contention and that the Liquidator having not denied them 'in his, counter affidavit would go on to show that the Liquidator has not acted in accordance with the provisions of IBC, 2016.'*

4.2 He further submitted that the above order of the AA was stayed by Hon'ble NCLAT vide its order dated 03.12.2021 stating that “...there shall be a ‘Stay’ of the Advertisement Notice’ dated 27.11.2021 published by the Liquidator inviting prospective applications (under Section 230 of the Companies Act, 2013) in IA No. 639/2021. There shall be a ‘Stay’ of the Impugned Order 17.11.2021 in IA No. 641/2021.”

4.3 Mr. Venkata Sivakumar quoted BLRC Report as follows:

*“The Code will enable symmetry of information between creditors and debtors*

*5. The law must ensure that information that is essential for the insolvency and the bankruptcy resolution process is created and available when it is required.*

*6. The law must ensure that access to this information is made available to all creditors to the enterprise, either directly or through the regulated professional.*

*7. The law must enable access to this information to third parties 'who can participate in the resolution process, through the regulated professional.’”*

He further referred the judgement of Hon'ble Supreme Court in Vijay Kumar Jain vs Standard Chartered Bank & Ors., CA 8430/2018 on 31.01.2019 mentioning the above extracts of BLRC report. He further submits that it has also been confirmed by the AA in *Hemant Shantilal Shah & Anr. Vs Care office Ltd. & Ord., IA 434/2020 in CP(IB) 602/2018*

*“...The intent of code being maximization of value while insolvency resolution process, all concerned should be given access to the document which will be crucial for deciding worth of corporate debtor which is intended to be given new lease of life. There is no specific provision to not to share copy of valuation report with ex-directors, we hold that in interest of justice the copy of valuation report needs to be supplied to ex directors, as already directed by the Predecessor Bench. Accordingly, we direct Resolution Professional to supply copy of valuation report to the applicants within 2 days of this order.*

*10. We are of the opinion that Resolution Professional shall provide a copy of the valuation report to the suspended management of the corporate debtor subject to an undertaking from members of the suspended management to maintain confidentiality. The source of this power is Regulation 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, read with paragraph 21 of the First Schedule thereto. This can be in the form of a non-disclosure agreement in which the resolution professional can be indemnified in case information is not kept strictly confidential.”*

4.4 He further submitted that Non Disclosure Agreement was taken from all the scheme proponents along with Rs. 2 crores of EMD. He further submitted that it was also confirmed by Indian Institute of Insolvency Professionals of ICAI (IIPI) in Background Guidance on Valuation Process under Code.

*“11. Whether Valuation report be shared with ex management?*

*(a) There is no specific provision for not sharing the copy of valuation report with ex-management, however the intent of code is to maximize the value and all concerned persons shall be given an access to the document as the same is crucial for deciding the worth of the Corporate Debtor subject to undertaking of confidentiality.*

*(b) Also, the s-management is part of COC even though without the voting right and therefore access of all documents shared in the COC shall be given to them.”*

4.5 Mr. Venkata Sivakumar referred the minutes of Joint Lenders meeting on 09.10.2020 as follows:

*“After further deliberations, the lenders opined that in case Rare ARC could not continue with its offer due to technical reasons and as the payment envisaged in other plans are lower than the CD’s liquidation value it would be difficult for considering the same. Hence, the terms have to be renegotiated with H2 & H3 for increase in their payment to stake holders and for reduction in the timeline for making payments.*

*After further deliberations on the matter, all the lenders were of the view to request the Liquidator for taking up with H1 (Rare ARC) for bringing upfront amount either in the form BG/Cash and to re-negotiate the following points in detail with H2 & H3 in view of their lower offer amount vis-à-vis to CD’s liquidation value.*

- 1. Further, improvement of the amount of payment of all the stakeholders.*
- 2. Reduction of timelines for making the payments(s).*
- 3. Charging interest at minimum of MCLR during payment period.*
- 4. Source of funds for meeting commitments as per the Resolution Plans*

5. *No onerous conditions, ensuring compliances of all applicable regulatory guidelines etc.”*

4.6 During the course of personal hearing, Mr. Venkata Sivakumar submitted that he has shared the valuation report with all the prospective applicants and also taken signed non-disclosure agreement from them. He stated that the liquidation value was disclosed in liquidation order itself dated 29.05.2020. He further submitted that he has filed recall petition before Hon’ble NCLAT against order dated 16.01.2024 in CA(AT)(INS) 302/2021.

## **5. Analysis and Findings.**

5.1 The DC notes that Hon’ble Madras High Court has disposed of the challenge to the aforesaid SCN by Mr. Venkata Sivakumar *vide* its judgement dated 22.12.2023 in *Ad. (CA) V.Venkata Siva Kumar vs Insolvency and Bankruptcy Board of India (IBBI) & Ors. WP No.21186 of 2023* and observed as follows:

*“This therefore, prima facie, indicates that the IBC and the Regulations made thereunder are anxious to protect the information leak on the valuation of the corporate assets both by the Resolution Professional or by the liquidator, even though they may have a role at different stages of a corporate insolvency proceeding, with the latter becoming necessary only when the former fails. (Here the two authorities which the petitioner has relied on in Vijayakumar Jain case and Hemant Shantilal case do not seem to authorise sharing of valuation report to the potential purchasers. Any way this may have to be considered only by the IBBI, but it depends on its jurisdiction to issue the impugned show cause notice, which is dealt with in the next section of this order).”*

...

*In as much as the petitioner has admitted that he had shared the valuation report of the CD, this Court considers that a prima facie ground is available for the IBBI to issue the show cause notice.*

*11.2 The second point first. As earlier explained, liquidation of a CD is not alien to the scheme of IBC and, Regulation 2B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, enables reading Sec.230 of the Companies Act into it. Therefore, merely because the petitioner was directed to perform a role by the NCLT, it does not prima facie entertain an idea that he ceases to be governed by the IBC, and the Regulations framed thereunder.*

*13. To conclude, this petition is dismissed, and the petitioner will have all the liberty to put forth his entire line of defence disciplinary enquiry, which needless to say includes all that the grounds on the basis of which he has now challenged the show cause notice. No costs. Consequently, connected miscellaneous petition is closed.”*

5.2 Mr. Venkata Sivakumar has filed the appeal, WA No. 218/2024, before Division Bench of Hon'ble Madras High Court which heard the matter on 19.01.2024 observing that *"We are not inclined to stall the enquiry. The enquiry may proceed on its own merits. The learned Single Judge of this Court has not decided any issue nor any finding has been arrived at conclusively. It is for the authorities to consider the case put forth by the petitioner on its own merits."* and posted the matter on 14.02.2024.

5.3 The DC notes that CA(AT)(CHE)(Ins) 302/2021 was finally disposed of on 16.01.2024 where it was observed as follows:

*"127. 'The Erstwhile Liquidator had shared the Draft Valuation Report' to the 'Resolution Applicants including the Appellant and Respondent No. 8 to 9.*

...

*133. It is not out of place for this Tribunal to make a pertinent mention that as per Regulation 34(4) of the Insolvency & Bankruptcy Board of India (Liquidation Process Regulations), the Liquidator / 7th Respondent, ought to file the 'Asset Memorandum', together with the preliminary report to the Adjudicating Authority / Tribunal. More importantly, Regulation 34(2)(a) of the Insolvency & Bankruptcy Board of India (Liquidation Process Regulations) enjoins that the 'Asset Memorandum', will include the Value of the Asset, to be arrived at as per Regulation 35. Therefore, it is candidly quite clear that the Sharing of the Reports with the Potential Resolution Applicants by the 7th Respondent / Liquidator is quite contrary to the Regulation 34 (4) of the Insolvency & Bankruptcy Board of India (Liquidation Process Regulations), in the considered opinion of this Tribunal.*

*134. One cannot remain in oblivion of a prime fact that the aforesaid 'Regulations' read in conjunction with Regulation 21 of the Insolvency & Bankruptcy Board of India (Insolvency Professionals Regulations, 2016) unerringly points out that an Insolvency Professional is to ensure that information to be of confidentiality in character pertaining to the Insolvency Resolution Process, liquidation or bankruptcy process and the same is to be maintained at all points of time.*

...

*No wonder, the 'valuation reports' are to be kept as confidential documents by the 7th Respondent / Liquidator."*

5.4 Further, Mr. Venkata Sivakumar vide his E-mail dated 02.02.2024 has submitted that, *" This is to inform you that Hon'ble NCLAT recalled the order in CA(AT)(Ins) 302/2021 for rehearing the same."* The said Review Application No. 02 of 2024 in CA(AT) (CH) (Ins) No.302/2021 has been withdrawn by Mr. V Venkata Sivakumar on 28.03.2024.

- 5.5 In light of above court cases filed by Mr. Venkata Sivakumar, the DC observes that he aims to keep the issue of contravention under SCN *sub judice* to avoid any findings by the DC. However, there is no denying in the fact that Mr. Venkata Sivakumar shared valuation reports with prospective applicants for scheme of compromises of the CD during liquidation. He accepts the same and has shared the email forwarding the valuation reports with them along with non-disclosure agreements signed with them for ensuring confidentiality. Such fact is acceptable by Mr. Venkata Sivakumar and is not under challenge in any of the decided or pending cases at multiple forums.
- 5.6 Regarding sharing of valuation reports, Mr. Venkata Sivakumar refers to the extracts of BLRC and judgements of Hon'ble Supreme Court in *Vijay Kumar (supra)* and Ld. NCLT, Ahmedabad Bench in *Hemant Shantilal Shah (supra)*. The DC observes that the BLRC provides for symmetry of information between creditors and debtors not prospective buyers or scheme proponents of a CD. In the matter *Vijay Kumar (supra)*, the issue before Supreme Court was “*to provide all relevant documents including the insolvency resolution plans in question to members of the suspended Board of Directors of the corporate debtor in each case so that they may meaningfully participate in meetings held by the committee of creditors [“CoC”]”*. Similarly, the NCLT, Ahmedabad Bench discussed about sharing of valuation report with director of suspended board of a CD. Mr. Venkata Sivakumar is confusing the information sharing with debtors, creditors and directors of suspended board of a CD with prospective resolution applicants and buyers of a CD during CIRP or liquidation as done by him.
- 5.7 The DC would like to highlight the importance of the valuation in the processes envisaged under the Code. Once a company is admitted into CIRP, it will either be resolved by a resolution applicant for a definite amount, or upon the failure of the resolution, the assets of the CD will be sold by the liquidator for a particular amount. To determine the specific benchmark amount that helps the decision-makers (CoC or the liquidator) to arrive at a decision is valuation report prepared by registered valuers. The valuation report provides a guide to assess the proposal received for the CD. Hence, sharing such valuation report with the prospective applicants will affect the offers by prospective applicants. It can lead to a scenario where proponents may quote value on par with the valuation report and ultimately frustrating the purpose of code of maximization of the value of the assets of the CD.
- 5.8 The DC further notes that under regulation 34(2) of Liquidation Regulations, the asset memorandum consists of value of assets or businesses as valued in accordance with regulation 35 of the Liquidation Regulations. Regulation 34(5) of the Liquidation Regulations before amendment in Liquidation Regulations specifically provides that “*The asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority*” Thus the DC observes that despite specific provision, he has shared the valuation of assets of CD which constitutes an important



component of Asset Memorandum. In light of the facts narrated above, the DC is constrained to uphold the contravention by Mr. Venkata Sivakumar as alleged in the SCN.

## 6. Order

- 6.1 The Insolvency professionals are the fulcrum of the insolvency eco-system. Keeping one-self aware of the provisions of the Code and regulations made thereunder and applying them in letter and spirit is the primary responsibility of the IRP/RP/ or Liquidator as the case may be. In case of any interpretation related confusion, directions of Adjudicating Authority can always be sought under the relevant provisions. Generalized interpretation of the context specific or reliance on judicial interpretations unrelated to the context need to be avoided in any case, otherwise the provisions of the Code will be interpreted loosely by each professional depending on his/her understanding in the matter. Regulation 34(5) of the Liquidation Regulations before amendment in Liquidation Regulations specifically provided that *“The asset memorandum shall not be accessible to any person during the course of liquidation, unless permitted by the Adjudicating Authority”*. Therefore, sharing such information with prospective bidders is akin to forcing the market play to bias around the liquidation value which is contrary to the spirit of value maximization as enshrined in the Code.
- 6.2 Further order of the Adjudicating Authority dated 17.11.2021 and 01.07.2022 and NCLAT dated 16.01.2024 clearly spell out the contravention on the part of Mr. Venkata Sivakumar. Further, keeping in view the directions of Division Bench of Hon’ble Madras High Court which heard the matter on 19.01.2024 in connection with WA No. 218/2024, Disciplinary Committee is going ahead *“to consider the case put forth by the petitioner on its own merits.”*
- 6.3 In view of the foregoing discussion, and materials available on record, the DC finds that Mr. Venkata Sivakumar has contravened section 35(1)(d), 208(2)(a) & (e) of the Code, regulation 34(5) of the Liquidation Regulations, Regulation 7(2)(a) & (h) of the IP Regulations read with clauses 1, 2, 12 and 14 of the Code of Conduct.
- 6.4 Keeping in view the facts recorded in the summary findings, the Disciplinary Committee, in exercise of the powers conferred under section 220 of the Code read with regulation 13 of the Investigation Regulations hereby, suspends the registration of Mr. Venkata Sivakumar for a period of two years.
- 6.5 This Order shall come into force after 30 days from the date of this order.
- 6.6 A copy of this order shall be sent to the CoC/Stakeholders’ Consultation Committee (SCC) of all the corporate debtors in which Mr. Venkata Sivakumar is providing his services, and

the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mr. Venkata Sivakumar.

6.7 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Venkata Sivakumar is enrolled as a member.

6.8 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.

6.9 Accordingly, the show cause notice is disposed of.

Sd/-

(Sudhaker Shukla)  
Whole-Time Member, IBBI

Dated: 09<sup>th</sup> April, 2024

Place: New Delhi