

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/213/2024

02 May 2024

Order

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/6/2023-IBBI/805/1429 dated 19.10.2023 issued to Mr. C Ramasubramaniam who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with registration no. IBBI/IPA-002/IP-N00052/2016-2017/10096 and a professional member of the ICSI Institute of Insolvency Professionals residing at 'RAJI', 3B1, 3rd Floor, Gaiety Palace, No. 1L, Blackers Road, Mount Road, Chennai, Tamil Nadu ,600002

1. Background

- 1.1 The Hon'ble NCLT, Chennai Bench, (AA) *vide* order dated 09.08.2021 admitted the application under section 9 of the Insolvency and Bankruptcy Code, 2016 (Code), initiated by M/s Umiya Development Centre Private Limited, Operational Creditor (OC) for Corporate Insolvency Resolution Process (CIRP) against M/s Star Trace Private Limited (Corporate Debtor/CD) and appointed Mr. K Ganesan as Interim Resolution Professional (IRP). The AA appointed Mr. C Ramasubramaniam as RP *vide* order dated 31.03.2022. Thereafter, the AA *vide* order dated 06.11.2023 appointed Mr. R. Venkatakrishnan as RP on application filed by the sole CoC member.
- 1.2 The AA in its order dated 10.11.2022 made certain observations regarding dereliction of duties by Mr. C Ramasubramaniam. The IBBI, in exercise of its powers under section 218 of the Code read with regulation 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the inspection of Mr. C Ramasubramaniam. Accordingly, a notice under regulation 8(1) of the Investigation Regulations was issued to Mr. C Ramasubramaniam on 19.01.2023. Pursuant to the said notice, he replied *vide* mail dated 25.01.2023. Thereafter, the investigation report was submitted to the Board by the IA.
- 1.3 The IBBI issued the SCN to Mr. C Ramasubramaniam on 19.10.2023 based on the material available on record including the investigation report in respect of his role as an RP of the CD alleging contravention of various provisions of the Code and its underlying regulations. Mr. C Ramasubramaniam submitted his reply to the SCN on 02.11.2023.
- 1.4 The Board referred the SCN, response of the IP to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. C Ramasubramaniam availed opportunity of personal hearing through virtual mode before the DC on 08.02.2024.

2. Alleged Contraventions, Submissions, Analysis and Findings

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

3. Contravention

Issue regarding non action on part of RP:

- 3.1 The Board observed that based on an application filed by Mr. Parthiban Rasu K, suspended director of the CD, for seeking stay on CIRP, Hon'ble NCLAT, Chennai Bench *vide* order dated 07.10.2021 granted interim stay on the order passed by the AA for initiation of CIRP of CD.
- 3.2 It is further observed from reply of Mr. C Ramasubramaniam to the IA that during the period of interim stay, a general Power of Attorney (POA) was executed on 16.12.2021 by the director of the suspended board in favour of Mr. Harsan Kumar, purported director of Operational Creditor (OC) for entering into agreement for sale of the property of the CD or to enter into sale deeds. Further, Mr. Harsan Kumar on the same day sold the said property to one Mr. Sunil J Sanghvir. The said registration of property was made as a part of the settlement between CD and OC wherein Mr. Harsan Kumar, purported director of OC signed the registration sale deed as seller. Subsequently, Hon'ble NCLAT was informed that there was a settlement between CD and OC and based on that they were ready to file Form FA before AA under section 12A of the Code. Consequently, Hon'ble NCLAT dismissed the appeal filed by the suspended Director as withdrawn with the following direction *vide* its order dated 23.02.2022:

"It is open to the 1st Respondent to file the Form FA (application for withdrawal of CIRP) under Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) 2016 before the 'Adjudicating Authority' (through Interim Resolution Professional/IRP) mentioning the name Of the Corporate Debtor within two weeks from today. In the event of filing of such application, the Adjudicating Authority is to number the same, if otherwise in order, and to dispose of the same within one week thereafter. Till the application for withdrawal is disposed of; the interim order granted by this Tribunal on shall continue."

- 3.3 It is further observed from minutes of the meeting of 3rd CoC held on 29.03.2022 that IRP informed the CoC that *"on due diligence conducted and verification of Registrar of Companies Website, Mr. Harsan Kumar has ceased to be the Director of M/s. Umiya Development Centre India Private Limited with effect from 16th October 2021."* The said fact was also intimated to CoC by Mr. C Ramasubramaniam in 4th CoC meeting dated 22.04.2022.

3.4 It is, thus, evident that Mr. C Ramasubramaniam was aware of the fact that the entire settlement process was undertaken in fraudulent manner as the Memorandum of Compromise settlement and the general POA were entered into by a person on behalf of OC who ceased to be a Director of OC, approximately two months prior to that and hence not authorized to sign any settlement agreement on behalf of CD. Despite being in full knowledge of the fact that CD's asset has been alienated in a fraudulent manner, no action was taken by him as RP till more than a year. As the asset of CD was sold to a third party based on settlement agreement entered into by an unauthorised person on behalf of OC due to which Form FA could not be filed before AA as directed by Hon'ble NCLAT in its order dated 23.02.2022, Mr. C Ramasubramaniam was required to seek direction from AA for further course of action including for ordering cancellation of fraudulent transaction by which asset of CD was alienated. However, he failed to initiate any action in this regard till more than a year.

3.5 It is further noted that Financial Creditor in this matter had filed an application before AA seeking its direction for RP to continue CIRP of the CD in view of failure of settlement proposal. The AA *vide* its order dated 28.06.2023 has directed the continuation of CIRP in this matter and also noted that:

"..However, negligence on the Resolution professional is strictly condemned by this Adjudicating Authority. The IRP/Resolution professional being a Court appointed officer is obliged to bring to the knowledge of this Authority any such hindrance that stands in-between to perform his/her duties."

3.6 It is, therefore, noted that Mr. C Ramasubramaniam has not taken any concrete steps for taking back the asset of CD sold through the fraudulent transactions. He has failed to file an appropriate application before AA regarding the said transaction. Merely writing a letter on 14.09.2023 to Sub Registrar Chennai for cancellation of registration of property in the matter of CD after delay of more than one year is nothing but an attempt to cover up his inaction for a period of more than one year towards restitution of the said property to CD. His inaction has further led to sale of the said property of the CD by Mr. Sunil J Sanghvir to Mr. S. Manokaran on 31.03.2023, as stated by him in his letter dated 14.09.2023 to Sub-registrar Chennai.

3.7 In view of the above, the Board held the *prima facie* view that Mr. C Ramasubramaniam has contravened section 25(1), 25(2)(a), 25(2)(b), 208(2)(a) & (e) of the Code, regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clause 14 of the Code of Conduct for IPs under First Schedule to IP Regulations (Code of Conduct).

4. Submissions by IP.

- 4.1 Mr. C Ramasubramaniam submitted that the Committee of Creditors (CoC) at its first meeting held on 07.09.2021 has appointed him as the RP in the place of IRP and the said appointment was confirmed by the AA *vide* its order dated 31.03.2022 which was received by him on 20.04.2022. During the period of IRP, an application seeking for stay on CIRP was filed by Mr. Parthiban Rasu K, director of the suspended board of the CD before the Hon'ble NCLAT, Chennai Bench on 28.08.2021. On 07.10.2021 the Hon'ble NCLAT, Chennai has passed an order granting interim stay against the order passed by the Hon'ble NCLT for initiation of CIRP Proceedings dated 09.08.2021. Since stay has been granted by the Hon'ble NCLAT, the director of the suspended board of the CD has executed a General Power of Attorney (No. 15281/2021) dated 16.12.2021 in favour of Mr. Harsan Kumar, director of OC. Further on the same day, a sale deed (Doc No. 15298/2021) was executed by Mr. Harsan Kumar, Director of OC for sale of property of the CD. The said sale deed was registered in favour Mr. Sunil J Sanghvir at sub registrar office, Redhills for a sale consideration of Rs.53,13,100 (Rupees fifty-three lakhs thirteen thousand one hundred only) on 16.12.2021. The said registration was made as a part of the settlement between CD and OC wherein Mr. Harsan Kumar, Director of OC has signed the registration sale deed as seller. The CD informed the Hon'ble NCLAT that there is a settlement between themselves and the OC and based on that they are ready to file Form FA under section 12A of the Code with the Hon'ble NCLT. The Hon'ble NCLAT has dismissed the appeal filed by the director of the suspended board of the CD as withdrawn with the following direction *vide* its order dated 23.02.2022:

"It is open to the 1st Respondent to file the Form FA (application for withdrawal of CIRP under Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 before the 'Adjudicating Authority' (through Interim Resolution Professional/ RP) mentioning the name of the Corporate Debtor within two weeks from today. In the event of filing of such application, the Adjudicating Authority is to number the same, if otherwise in order, and to dispose off the same within one week thereafter.

Till the application for withdrawal is disposed off, the interim order granted by this Tribunal on 07.10.2021 shall continue."

- 4.2 He submitted that the registration happened on 16.12.2021 whereas the said director had resigned from the board of directors of the OC on 16.10.2021 itself and he was no longer authorized to sign any agreement on behalf of the said OC making the entire transaction as fraud and *void ab initio*. The said fraudulent transaction happened on 16.12.2021 itself and the same was reported to Hon'ble NCLAT and the Hon'ble NCLAT has passed the order for filing Form FA with Hon'ble NCLT on 23.02.2022 itself. The above stated fraudulent transaction happened during the period of interim stay on CIRP period as imposed by the Hon'ble NCLAT.

- 4.3 He submitted that the IRP Mr. Ganesan ascertained the issue of Mr. Harsan Kumar; being no longer a director of OC , and he had resigned while signing the sale deed and other connected papers for registration of property. The same was recorded in the minutes of 3rd CoC meeting held on 29.03.2022. During the operation of stay, the AA appointed Mr. C Ramasubramaniam as RP on 31.03.2022 whose order was received by him on 20.04.2022. He submitted that at the time of appointment of RP on 31.03.2022, there was a stay on CIRP proceedings since no Form FA was filed before the AA. Immediately on receipt of the order, he convened the 4th CoC on 22.04.2022 at 04.00 PM to take up the issue. Since the CoC has been formed already, Form FA under section 12A can be filed only upon getting the approval from the CoC. Meanwhile on the date of 4th CoC meeting i.e., 22.04.2022 at 3.35 PM, he received a mail from Mr. P.R. Maheswaran, director of the suspended of the CD informing that the stay granted by Hon'ble NCLAT is in force and the 4th COC meeting should not be convened.
- 4.4 He submitted that to clear the deadlock, the meeting was convened on the scheduled date wherein he again appraised the CoC members about the issue with regard to the sale of the property of the CD. In this matter, considering the stay on CIRP, he advised the State Bank of India (SBI), to file an application to report the fraud committed by the director of the suspended board and to resume the CIRP proceedings as he had no power to file any application as an RP, since there was a stay in progress. After discussion, the CoC i.e., State Bank of India, sole FC with 100% voting right had decided to file an application before the AA to report the fraud committed by the director of the suspended board and to resume the CIRP proceedings since he as a RP had no power to file any application during the period of stay. Accordingly, an application for removal of stay on CIRP was filed by the sole CoC member viz., State Bank of India on 16.07.2022 before the AA as the entire transaction happened in fraudulent manner by the resigned director of OC viz., Mr. Harsan Kumar and the real OC has never initiated the withdrawal process as well as not complied with the order of the Hon'ble NCLAT. The above said application came up for hearing on 05.08.2022 wherein the AA has directed the applicant (State Bank of India) to issue notice to the respondents and file affidavit of service on or before next dates of hearing.
- 4.5 On 10.11.2022, when the application came up for hearing, the AA directed him to file a detailed reply as to why the Form FA has not been filed. Accordingly, he filed a detailed reply as Memo of facts on 16.11.2022 with the AA.
- 4.6 On 15.12.2022, the case was listed for hearing wherein the collusion between the OC and CD was explained in detail by him and the Counsel of State Bank of India. Further it was informed ;
- i. The Form FA cannot be filed as Mr. Harsan Kumar is no longer a director and
 - ii. SBI being 100% COC member is not ready for a settlement and decided to continue the CIRP with the new RP and it was humbly prayed to order the continuation of CIRP and to permit the RP to perform his duties.

Also, as per the last line of order of Hon'ble NCLAT dated 07.10.2021 stay of CIRP still continues and the sole FC is in very precarious position of not able to act, neither take any steps against the CD under other provisions of law, in view of the moratorium. Accordingly, the prayer sought in the said application is in view of non-filing of Form FA along with application within two weeks from the date of the order of Hon'ble NCLAT dated 23.02.2022 and hence requested to allow the application and CIRP may be ordered to continue. The application was posted for next hearing. Finally, on 28.06.2023, the AA pronounced its order for the application filed by the State Bank of India to continue CIRP and the RP was directed to file a status report within a period of two weeks. He submitted that he had filed the same.

- 4.7 He submitted that with regards to no application was filed before the AA for the fraudulent transfer of the property, he submitted that the AA doesn't have power to cancel the fraudulent registration. Hence, he has to approach the concerned sub-registrar office, Registration Department to file a protest petition as first instance to prevent any further transfer and parallel request for cancellation of fraudulent registration and accordingly, he approached the sub-registrar office, Redhills during the month of July 2023. Since he was unable to get the copies of the original documents from the directors of the suspended board, hence he has applied for certified true copies of the sold document with the sub registrar and filed his protest and also sought hearing for the same.
- 4.8 He submitted that on 25.09.2023, he submitted the letter for cancellation of fraudulent registration and protest petition with the office of sub-registrar office through registered post with acknowledgement due on 25.09.2023 to the office of District Registrar, Tiruvallur and sub registrar office, Redhills. After, receipt of the request for cancellation of fraudulent registration, the District Registrar will call for an enquiry and for which he will need to appear and explain all facts of the case. Then they will enquire the same with the opposite party and thereafter they will pass orders accordingly.
- 4.9 Mr. C Ramasubramaniam in his reply dated 10.02.2024 to the queries raised by the DC on 08.02.2024 submitted that only documents were given and after the continuation of CIRP order the erstwhile IRP visited along with him and handed over the physical possession of the factory. Further, the alleged fraudulent settlement between the OC and CD was brought before the AA in the application (IA (IBC)/792(CHE)/2022) filed by the secured FC i.e., State Bank of India seeking for continuation of CIRP process.

Particulars of Events	Date
Dates and events prior to the stay on CIRP	
Commencement of CIRP	09.08.2021
Public Announcement was issued in Newspaper "Business standard" (English) at Chennai Edition and "Dhinamani (Tamil)" (Vernacular Language) at Tamil Nadu Edition by IRP	12.08.2021

Last date of submission of claims as per public announcement.	23.08.2021
Filed Report certifying constitution of the committee with the AA by the IRP	27.08.2021
Stay application was filed by Mr. Parthiban Rasu K. suspended director of the CD before the NCLAT, Chennai Bench	28.08.2021
Submission of First Status Report with the AA by IRP	28.08.2021
First meeting of CoC and resolution passed for appointment of Mr. C. Ramasubramaniam as RP in place of IRP by State Bank of India, sole Financial Creditor with 100% voting	07.09.2021
Submission of Second Status report with the AA by IRP	09.09.2021
Second Meeting of CoC held on	05.10.2021
During the period of stay on CIRP imposed by the NCLAT, Chennai Bench	
Order passed by the NCLAT, Chennai granting interim stay against the order passed by the AA for initiation of CIRP dated 09.08.2021	07.10.2021
Second hearing held for the appeal filed by the suspended director before the NCLAT, Chennai Bench	16.12.2021
Registration of the property of the CD – Registration executed by the suspended director, since the stay has been granted. Registration was made as a part of the settlement between CD and OC where in the Mr. Harsan Kumar, director of OC has signed the registration sale deed as purchaser. The registration was happened on 16.12.2021 whereas the said director was resigned on 16.10.2021 itself and he was no longer authorised to sign any agreement on behalf of the said OC.	16.12.2021
Third hearing held for the appeal filed by the suspended director before the NCLAT, Chennai Bench	16.02.2022
The NCLAT dismissed the appeal as withdrawn with the following direction: <i>"It is open to the 1st Respondent to file the Form FA (application for withdrawal of CIRP) under Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 before the 'Adjudicating Authority' (through Interim Resolution Professional/RP) mentioning the name of the Corporate Debtor within two weeks from today. In the event of filing of such application, the Adjudicating Authority is to number the same, if otherwise in order, and to dispose off the same within one week thereafter.</i> <i>Till the application for withdrawal is disposed off, the interim order granted by this Tribunal on 07.10.2021 shall continue. "</i>	23.02.2022

Submission of Third status report with the AA by the IRP	09.03.2022
Third Meeting of CoC held on	29.03.2022
IRP ascertains the issue of Mr. Harsan Kumar, Operational creditor is no more a director and has resigned when signing the Sale Deed and other connected papers for Registration of property	29.03.2022
Submission of Fourth status report with the AA by the IRP	31.03.2022
The AA passed an order of confirming the appointment of Mr. Chandramouli Ramasubramaniam as RP	31.03.2022 (Order Received on 20.04.2022)
Fourth Meeting of CoC wherein it was decided to file an application for removal of stay on CIRP before the AA since no application was filed seeking for withdrawal of CIRP as per the directions of the Hon'ble NCLAT	22.04.2022
RP has also identified from the Encumbrance certificate from TN Registration portal, that the same property was registered to another party viz. Sunil J Sanghvir on the same date by Mr. Harsan Kumar, OC at Sub Registrar Office, Redhills and the same was discussed in the Fourth CoC meeting also	22.04.2022
Mail received from Mr. P.R.Maheswaran. director of the CD informing that the stay granted by the NCLAT is in force and the 4 th CoC should not be convened.	22.04.2022
An application under sec 60(5) IBC, 2016 was filed with the AA by the sole FC i.e.. State Bank of India (CoC) for removal of stay on CIRP.	16.07.2022
Memo of facts was also filed for application filed under sec 60(5) of the Code with the AA by sole FC i.e. State Bank of India (CoC) for removal of Stay on CIRP.	16.11.2022

<p>List of dates on which the application for removal on STAY on CIRP process was listed before the AA :</p> <ol style="list-style-type: none"> 1. 05.08.2022 2. 30.08.2022 3. 10.11.2022 4. 24.11.2022 5. 15.12.2022 6. 19.12.2022 7. 19.01.2023 8. 24.02.2023 9. 27.03.2023 10. 03.05.2023 11. 28.06.2023 	
<p>After various hearings, the AA passed an order for vacation of stay on CIRP ordered by the Hon'ble NCLAT and directed the RP to file a Status Report within two weeks from the date of order</p>	28.06.2023
<p>Dates and events after removal of STAY on CIRP process as imposed by the Hon'ble NCLAT, Chennai</p>	
<p>As per Regulation 27 of IBBI (CIRP Process) Regulation, 2016 the RP appointed below mentioned Registered valuers:</p> <ol style="list-style-type: none"> 1. Mr. M. Muniyandi (Plant & Machinery) 2. Mr. Raju P (Plant & Machinery) 3. Mr. S. Socrates (Land & Building) 4. Mr. Anand Raju (Land & Building) 	06.07.2023
<p>Letter addressed to the Suspended Directors of CD seeking for original property documents and other details/documents of the CD</p>	10.07.2023
<p>Fifth Meeting of CoC held on</p>	11.07.2023
<p>As per the direction of the AA <i>vide</i> its order dated 28.06.2023, the RP has filed an application for taking on record of Status Report</p>	12.07.2023
<p>Letter addressed to the suspended directors of CD seeking original property documents and other details/documents of the CD</p>	17.07.2023
<p>Information Memorandum was submitted to the FC through mail</p>	04.09.2023
<p>An application was filed by the RP for exclusion of stay on CIRP period with the Hon'ble NCLT</p>	09.09.2023

Various follow up mails were addressed to the suspended director, however they have failed provide the details/documents and there was a non-cooperation from them. Also they did not provide the original documents and details/documents which was addressed in letter dated 10.07.2021 & 17.07.2023, Hence, the RP has filed an application under section 19 of the Code with the AA. The same was numbered as IA(IBC)/1742(CHE)2023 and came up for hearing on 06.10.2023 and the matter was further posted to 23.11.2023.	22.09.2023
An application was filled by the State Bank of India for replacement of RP with the AA and the same was pending for adjudication	22.09.2023
Protest petition was sent through registered post with acknowledgement due to the Sub Registrar Office, Redhills requesting not to execute further registration without the consent of RP	14.09.2023
Request letter for cancellation of registration of the property of property of the CD was submitted with Sub Registrar Office, Red Hills and District registrar. Thiruvallur District through registered post with acknowledgement due	14.09.2023
At the hearing held on 25.09.2023 the AA has passed an order for the application filed seeking for exclusion of stay period from CIRP process wherein the stay period having lost due to legal proceeding was excluded and CIRP was extended till 27.10.2023	25.09.2023
Sixth CoC meeting was held on	11.10.2023
Seventh CoC meeting was held on 20.10.2023 wherein the CoC has passed a resolution for replacement of Resolution Professional with another Insolvency Professional.	20.10.2023
Expression of Interest in Form-G was issued in the following newspapers for Inviting prospective resolution applicants: 1. Business Standard - English 2. Makkal Kural - Tamil	26.10.2023

5. Analysis and Findings.

- 5.1 The CD was admitted to CIRP on 09.08.2021. Thereafter, a stay application was filed by Mr. Parthiban Rasu K, suspended director of the CD before the NCLAT, Chennai Bench on 28.08.2021. In the meantime, the CoC was formed and on 07.09.2021 Mr. C Ramasubramaniam was recommended to be appointed as RP of the CD by the CoC. Later, on 07.10.2021, the NCLAT Chennai Bench stayed the operation of the order of AA dated 09.08.2021 admitting CD to CIRP till the next date of hearing.

- 5.2 The DC notes that OC in its board resolution dated 01.10.2021 authorised its director Mr. Harsan Kumar to represent the OC in appeal filed by suspended director of CD and also as authorised signatory to engage counsel, signing and verifying affidavits, reply affidavits if any, or enter into compromise and do all necessary acts in respect of the appeal.
- 5.3 While the stay on CIRP was prevailing, the suspended director of the CD executed a General Power of Attorney on 16.12.2021 in favour of Mr. Harsan Kumar, director of the OC. Further on the same day, a sale deed was executed by Mr. Harsan Kumar for sale of property of the CD in favour of Mr. Sunil J Sanghvir on 16.12.2021. The said Registration was made as a part of the settlement between CD and OC.
- 5.4 The NCLAT, Chennai Bench on 16.02.2022 observed that Memorandum of Compromise dated 16.12.2021 was entered into between the CD and OC. The counsel for OC sought time to verify the matter and take instructions from the party and hence it was adjourned to 23.02.2022. On said date, the suspended director of the CD sought permission to withdraw the appeal which was granted. The NCLAT, Chennai Bench granted liberty to OC to file the Form FA (application for withdrawal of CIRP) under regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 before the 'Adjudicating Authority' (through IRP/RP) mentioning the name of the CD within two weeks.
- 5.5 The IRP Mr. K Ganesan in his reply to AA on 05.01.2023 submitted that the withdrawal application in Form FA dated 25.03.2022 signed by the OC was received by him. He submitted that he carried out verification of Form FA through search in CD's Master Data and director's Master Data from the Ministry of Corporate Affairs (MCA) website and it was found that there was a change in the directorship of the OC with effect from 16.10.2021. The DC notes as per MCA records Mr. Harsan Kumar had ceased to be director of the OC from 16.10.2021.
- 5.6 The IRP further submitted in his reply to AA that the application for withdrawal of CIRP was signed by the erstwhile director of the OC, ie, Mr. Harsan Kumar and he placed it as agenda No.6 in the 3rd CoC meeting held on 29.03.2022.
- 5.7 In 3rd CoC meeting the following was discussed and resolved:

“As ordered by Hon’ble NCLAT and in pursuant to section 12A and Regulation 30 of IBC Code, 2016, Mr. Harsan Kumar as Managing Director of M/s Umiya Development Centre India Private Limited has submitted Withdrawal Application in Form FA dt.25.03.2022 (5 months after his cessation of Directorship from the subject company) to IRP for placing the same to CoC and to file before Hon’ble Adjudicating Authority, NCLT Chennai Bench 2 for orders.

Based on the foregoing, the IRP has informed that the withdrawal application in Form FA by Mr. Harsan Kumar (who ceased to be Director with effect from 16.10.2021) could not be placed before CoC for voting. IRP requested the CoC to deliberate on this subject and pass suitable resolution.

After deliberation, SBI, sole financial creditor with 100% voting right in CoC has passed the following resolution:

“RESOLVED THAT the members of the Committee of Creditors to take a legal view on the subject matter and based on the legal view and getting the details as called for by the IRP from Mr. Harsan Kumar, erstwhile director of M/s Umiya Development Centre India Private Limited and getting a fresh withdrawal application in Form FA from the present directors viz. Mr. Bichitra Kumar Misra (DIN09361935) and Mr. MaheswarMallick (DIN09361994) with due compliance of Regulation 30 of IBC Code, 2016 and to place the same in the next CoC for taking necessary decision and approval.”

RESOLVED FURTHER THAT Mr. K Ganesan, Interim Resolution Professional of the Company, be and is hereby authorized to do all such acts, deeds and things including engaging the Advocate, as may be considered necessary to give effect to the above resolution.”

- 5.8 The DC notes that as resolved by the CoC, the IRP sought legal opinion dated 07.04.2022 which stated as follows:

“Since Harsan Kumar is no more a director and the powers of attorney granted to him otherwise deal with assets of the corporate debtor for and on behalf of the OC and any appropriation of any amount obtained through the sale of the assets of the CD as a part of the compromise settlement there is a chance that, the current MD of OC may challenge such settlement.

...

It is evident that all the three documents i.e., POA, MoS as well as the Form 12A has been executed by an incompetent person with fraudulent intentions amounts to warrant action under Section 60(5) of IBC, 2016 as the same is malicious and bad in law and it amounts to transferring of an asset of the CD by malicious initiation of proceedings under IBC. The Act of Mr. Harsan Kumar amounts to misrepresentation and impersonation under IPC and his acts also amount to perjury as an attempt to misrepresent as the director of the operational creditor. The Conduct of the parties involved and the nature and character of documents referred to disclose a fair judgment to dispose of the unencumbered assets of the CD in a collusive manner by and between the Cd and the operational creditor wherein die quantum of the debt and the price of the asset is neither being disclosed either in the MoS or the PoA The action of Mr Harsan Kumar amounts4 Impersonation and Misrepresentation under IBC as well as violation of companies act under Section 447:

Conclusion: In Conclusion, we hereby opined as follows:

That the Form-FA executed by the said Hasan Kumar is invalid unless it is ratified through a Board resolution by the current board of the Operational c/editors. Hence the same shall not be proceeded with by Filing an application for withdrawal by the Resolution Professional. Regarding the actions of the proposed offenses under IBC and IPC, we leave it to the judgment and wisdom of the learned Resolution Professional and the Committee of Creditors Chaired by him.”

5.9 In the meantime, Mr. C Ramasubramaniam was appointed as RP on 31.03.2022 by the AA. The IRP Mr. K Ganesan submitted in his reply to AA that he has handed over documents to the RP vide his letter dated 17.04.2022 which was duly acknowledged by him on 19.04.2022. The RP also substantiates that he was only given documents and after the continuation of CIRP order the erstwhile IRP visited along with him and handed over the physical possession of the factory.

5.10 The DC notes the submission of Mr. C Ramasubramaniam that he convened the 4th CoC meeting on 22.04.2022 at 04.00 PM to take up the issue. The CoC discussed as follows:

“RP said that since, Mr. Harsan Kumar has executed the MOC and POA when he was no longer holding the position of directorship in the OC, the MOC and POA will be void and the transfer made to the third party also is void ab initio and the property of the CD will be recovered subject to the Approval of the NCLT. Section 43/45/66 Application will also be filed in this regard. RP informed CoC that, he will check and confirm if the third party to whom the Property was sold is related party.

CoC took note of the same.

Mr. R. Rupalingappa, Assistant General Manager, State Bank of India has requested the RP to take immediate action for the property which was transferred to the third party by Mr. Harsan Kumar.”

...

“RP informed CoC that, after his appointment as RP, it is the duty of the RP to take into custody and control the Assets of the Corporate Debtor and accordingly the important matters to be discussed in the CoC relating to CIRP of the CD was placed in the notice to the members, but since the stay of CIRP continues, he will defer the agenda items 6 to 14 accordingly. Hence, the above items were only discussed in the meeting.

Members took note of the same.

Further, it was discussed between RP and the CoC that RP can initiate necessary steps for filing applications before NCLT and NCLAT.”

- 5.11 The DC notes that application for removal of stay on CIRP was filed by the sole CoC member viz., State Bank of India on 16.07.2022 before the AA. The AA directed the RP to file detailed reply on 10.11.2022 and also directed to serve copy of order to IRP. Thereafter, the stay was vacated by the AA on 28.06.2023 observing that there is negligence on part of IRP and RP.
- 5.12 Regarding the issue of non-filing of application of withdrawal of CIRP by the RP, the DC notes that regulation 30A of the CIRP Regulations which provides as follows:

“30 A. Withdrawal of application.

(1) An application for withdrawal under section 12A may be made to the Adjudicating Authority –

(a) before the constitution of the committee, by the applicant through the interim resolution professional;

(b) after the constitution of the committee, by the applicant through the interim resolution professional or the resolution professional, as the case may be:

Provided that where the application is made under clause (b) after the issue of invitation for expression of interest under regulation 36A, the applicant shall state the reasons justifying withdrawal after issue of such invitation.

(2) The application under sub-regulation (1) shall be made in Form FA of the Schedule-I accompanied by a bank guarantee-

(a) towards estimated expenses incurred on or by the interim resolution professional for purposes of regulation 33, till the date of filing of the application under clause (a) of subregulation (1); or

(b) towards estimated expenses incurred for purposes of clauses (aa), (ab), (c) and (d) of regulation 31, till the date of filing of the application under clause (b) of sub-regulation (1).

(3) Where an application for withdrawal is under clause (a) of sub-regulation (1), the interim resolution professional shall submit the application to the Adjudicating Authority on behalf of the applicant, within three days of its receipt.

(4) Where an application for withdrawal is under clause (b) of sub-regulation (1), the committee shall consider the application, within seven days of its receipt.

(5) Where the application referred to in sub-regulation (4) is approved by the committee with ninety percent voting share, the resolution professional shall submit such application along with the approval of the committee, to the Adjudicating Authority on behalf of the applicant, within three days of such approval.

- 5.13 The DC notes that the application of withdrawal of CIRP requires approval of CoC by 90% voting share. Since the sole member of the CoC did not accord any such approval, the IRP/RP could not have filed the application for withdrawal of CIRP. However, the minutes of 4th CoC meeting points that RP was required to initiate necessary steps for filing relevant applications before the AA and the NCLAT. However, such steps have not been taken.
- 5.14 Regarding failure to take custody of the assets of CD, the DC notes that the IRP filed CIRP Form-2 dated 14.09.2021 stating that *“Suspended directors of CD has informed that the tally package and other documents were seized by GST Authorities during the search conducted. IRP has taken up with GST Authorities. The Registered Office of the CD was directed for closure on declaration of the building from 17.08.2021 to 31.08.2021 by District Collector, Thiruvallur since one of the staff was tested Covid Positive. Hence, the IRP could not have access to the premises during the 15 days’ time. Application is being made to NCLT for exclusion of the said 15 days from the CIRP timeline. CoC at its meeting held on 07.09.2021 has directed to furnish all the details / documents and control of assets to the IRP on or before 18.09.2021 and resolved to file application under Section 19(2) of the code. Even after 31.08.2021, the IRP and his team visited Registered Office of the CD on 3 days from 01.09.2021, wherein it is observed that the CD is keeping the Registered Office as closed, without giving any access to IRP for getting access. IRP will be filing the application under Section 19(2) before NCLT for directions.”*
- 5.15 The DC notes that such application under section 19(2) was filed by RP only on 22.09.2023. The above status update in CIRP Form -2 implies that IRP was not able to take custody and control of the assets of the CD before the stay on 07.10.2021. The DC notes that there was stay on the CIRP proceedings implying further steps could not be taken in the process. However, it does not imply stay on moratorium imposed on the CD. The alleged transfer of the assets of the CD leading to settlement between CD and OC was done while moratorium was prevailing. The transfer of the assets of the CD cannot be done during the period of moratorium. Further, any settlement terms requires approval of the CoC which is provided in regulation 30A(5) of the CIRP Regulations. In the given case, the CoC had been formed and held first meeting on 07.09.2021 and second meeting on 05.10.2021 where proposal to replace IRP was approved. The order for stay of CIRP was passed on 07.10.2021. The stay order only put status quo on moving ahead with the process. It did not imply reverting the control of CD back in the hands of the directors of its suspended board. Hence, the alleged transfer of assets of CD in garb of settlement is a breach of moratorium and required to be set aside on that ground itself. The status of Mr. Harsan Kumar as authorised representative of OC may be a factor for challenging the action of CD. However, even otherwise, assets of CD cannot be transferred during the moratorium and so the action of the CD involving the transfer of assets of the CD during the moratorium is unlawful and such settlement and withdrawal should have been challenged on this ground itself by the RP.

- 5.16 Moreover, the IRP was arrayed as respondent no. 2 in appeal no. CA(AT)(Ins) 242/2021 before the NCLAT, Chennai Bench. However, a bare perusal of orders of the NCLAT in said appeal highlights that the respondent no. 2 was not represented. The IRP being a necessary party and custodian of the CD was required to inform the NCLAT and made them aware about the status of CIRP and formation of the CoC since the approval of CoC with 90% voting is required to file Form FA as per regulation 30A of CIRP Regulations. , An enquiry may be made by the Board in the conduct of IRP Mr. K Ganesan in respect of non-representation before NCLAT as well as laxity in taking custody and control of the assets and records of the CD.
- 5.17 The DC notes the submissions of Mr. C Ramasubramaniam that if he performed his duties during the period of stay the suspended director would have filed a complaint before the Board stating that during the period of stay he was carrying out his duties as RP. But since he did not carry out his duties as RP considering the stay, the AA referred the same to the Board. The DC notes that there is difference between stay of an order and quashing of any order. In the stay of CIRP, RP is not implied to handover charge of the CD. Any such result of stay of the CIRP shall be disastrous since if the management against whom the CIRP has been initiated is handed over the charge, it is prone to misuse the assets and the assets may be diminished, which may adversely affect the creditors of the CD. In view of the stay on the operation of the order initiating the CIRP, the RP cannot take any further steps in the CIRP of the CD. However, it does not remove him from his position as RP. He is entitled to bring before the NCLT and the NCLAT all relevant facts and take action for defending continuation of CIRP rather than being a mere spectator. In the event of stay of the admission of CIRP, if the ex-management of the CD is allowed to function as it was functioning prior to date of order of admission, there shall be no difference in staying an Order and quashing of an Order.
- 5.18 Thus, the DC is of the considered view that stay on CIRP does not bar an IRP/RP to function as RP. It only prevents him from taking the process further. The DC notes that stay by the NCLAT was on the further proceedings with the CIRP. It did not imply reverting control back in the hand of the directors of the CD. Further under section 25(2)(a) of the Code, the RP shall take immediate custody and control of all the assets of the CD, including the business records of the CD. Further section 25(1) of the Code provides that it is the duty of RP to preserve and protect the assets of the corporate debtor, including the continued business operations of the CD. The DC notes the submissions of IRP before the AA that the RP received the custody of documents of the CD from IRP on 19.04.2022. However, Mr. C Ramasubramaniam submitted that he was handed over the physical control of the assets of the CD only after the AA passed an order dated 28.06.2023 for continuation of CIRP. It implies that the RP did not make any effort to take control of the assets of the CD from date of his appointment, i.e., 31.03.2022 to 28.06.2023. Even when the CoC in its 4th CoC meeting on 22.04.2022 requested him to take immediate action for the property which was transferred to the third party by Mr. Harsan Kumar.

- 5.19 The DC notes that Mr. C Ramasubramaniam was required to make efforts to take control and custody of the assets of CD immediately upon his appointment. It was also noted in the minutes of 4th CoC meeting dated 22.04.2022. Further, he should have brought the fact of such alleged transfer of assets of the CD into the knowledge of the AA or the NCLAT as it hit at the very foundation of stay prevailing on CIRP of CD. Moreover, Mr. C Ramasubramaniam was required to file application for cancellation of such transfer of assets of the CD on the ground of breach of moratorium. Such proceedings before the AA would have accelerated the process of cancelling the transfer of the assets of CD and bringing back in its control. There was a casual approach adopted by Mr. C Ramasubramaniam by shifting responsibility on the FC to file the application before AA seeking an order for continuation of the CIRP. Such dereliction of duty is unbecoming of an insolvency professional.
- 5.20 Moreover, Mr. C Ramasubramaniam submitted that he filed protest petition before the office of concerned sub registrar to prevent any further transfer and also requested for cancellation of fraudulent registration only in month of July, 2023 which is around 16 months after he was appointed as RP of the CD. He wrote a letter to concerned sub-registrar requesting cancellation of registration of the property of CD only on 14.09.2023. Such delay cannot be camouflaged behind the stay on CIRP proceedings where he was required to make efforts to take custody and control of the assets of the CD immediately upon his appointment. Hence, there is clear negligence by Mr. C Ramasubramaniam in taking actions to protect and preserve the assets of the CD.

6. Order

- 6.1 In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Mr. C Ramasubramaniam and the other materials made available to the DC, the DC finds Mr. C Ramasubramaniam in contravention of 25(1), 25(2)(a), 25(2)(b), 208(2)(a) & (e) of the Code, regulation 7(2)(a) & (h) of the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with clause 14 of the Code of Conduct for IPs under First Schedule to IP Regulations (Code of Conduct).
- 6.2 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 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby suspends Mr. C Ramasubramaniam for a period of two years. This period of two years shall commence on expiry of the period of suspension imposed on Mr. C Ramasubramaniam vide earlier DC order dated 19.06.2023.
- 6.3 This Order shall come into force after 30 days from the date of issue of this order.
- 6.4 A copy of this order shall be sent to the CoC/Stakeholders Consultation Committee (SCC) of all the corporate debtors in which Mr. C Ramasubramaniam is providing his services, and the

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

6.5 The DC further directs the Board to conduct investigation about the conduct of IRP, Mr. K. Ganesan, as observed in para 5.16.

6.6 A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals where Mr. C Ramasubramaniam is enrolled as a member.

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

6.8 Accordingly, the show cause notice is disposed of.

Sd/-

(Sandip Garg)

Whole-Time Member

Insolvency And Bankruptcy Board of India

Sd/-

(Jayanti Prasad)

Whole-Time Member

Insolvency And Bankruptcy Board of India

Dated: 02 May 2024

Place: New Delhi