

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/219/2024

05 June 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/COMP/2022-23/01103(IBBI/C/2022/00809)/808/1432 dated 20.10.2023, issued to Mr. Muthuiah Thevar Rajapandian, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-003/IP-N00090/2017-2018/10854, who is a Professional Member of the Insolvency Professional Agency of Institute of Cost Accountants of India and having residential address recorded with IBBI as 3/158, Bharathiyar St, Indian Bank Colony, Narayana Puram, Madurai, Tamil Nadu – 625014.

1. Background

- 1.1 The Hon'ble National Company Law Tribunal, Chennai Bench (AA) vide its Order dated 04.10.2019, admitted the application filed by M/s. Kanaka Durgaa Crane under Section 9 of the Code for initiating corporate insolvency resolution process (CIRP) of Unique Roof Private Limited (Corporate Debtor /CD). Mr. Muthuiah Thevar Rajapandian was appointed as Interim Resolution Professional (IRP) vide the above said Order.
- 1.2 The IBBI in exercise of its powers under Section 218 of the Insolvency and Bankruptcy Code (Code), read with Regulations 7(1) and 7(2) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 (Inspection and Investigation Regulations), appointed an Investigating Authority (IA) to conduct investigation in the CIRP of the CD.
- 1.3 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the Board formed a *prima facie* view that Mr. Muthuiah Thevar Rajapandian has contravened several provisions of the Code, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and issued the SCN to Mr. Muthuiah Thevar Rajapandian on 20.10.2023. The reply of Mr. Muthuiah Thevar Rajapandian on the SCN was received by the Board on 02.11.2023.
- 1.4 The SCN and response of Mr. Muthuiah Thevar Rajapandian to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Muthuiah Thevar Rajapandian

availed an opportunity of personal hearing before the DC through virtual mode on 14.02.2024.

2. Alleged Contraventions, Submissions of Mr. Muthuiah Thevar Rajapandian and Findings of DC

The contravention alleged in the SCN, submissions by Mr. Muthuiah Thevar Rajapandian and findings of the DC are summarized as follows:

2.1 Non-action on part of IRP while conducting CIRP.

- 2.1.1 It was observed that the suspended director of the CD had filed an appeal against the admission Order of AA dated 04.10.2029 before the NCLAT, Delhi. the NCLAT, Delhi *vide* its order dated 18.10.2019 passed the following direction:

“Post the case for ‘admission’ (after notice) on 6th December, 2019.

In the meantime, the Interim Resolution Professional (IRP) will ensure that the company remains going concern and the manufacturing and production of the company do not suffer; payment of wages to the employees/workmen and supplied during Resolution Process shall be made on time. The Insolvency Resolution Professional will take aid of (suspended) Board of Directors, paid Directors, officers and the employees of the Corporate Debtor. The Banks having account of the corporate debtor will also cooperate with the Resolution Professional to ensure compliance of this order.”

- 2.1.2 The aforesaid order of Hon’ble NCLAT doesn’t categorically mention the stay of the admission order of AA. As per the direction of Hon’ble NCLAT in the said order, Mr. Muthuiah Thevar Rajapandian was directed to ensure that the company remains a going concern and manufacturing and production of CD do not suffer, apart from the other duties entrusted upon him.

- 2.1.3 It was however noted that Mr. Muthuiah Thevar Rajapandian had not proceeded with CIRP of the CD for more than two and a half years on the basis of the aforesaid Hon’ble NCLAT order without seeking any clarification either from Hon’ble NCLAT itself or from AA. The AA *vide* order dated 26.04.2023 observed as under:

“Heard the submissions made by the Learned Counsel for the Applicant. It is seen that the Hon’ble NCLAT vide its order dated 18.10.2019 passed in Company Appeal (AT)(Ins) No. 1086 of 2019 has only stated to keep the Corporate Debtor as a going concern and a cursory glance of the said order would clearly manifest the fact that no stay has been granted by the Hon’ble NCLAT. However, to our utter shock and surprise, the erstwhile IRP has repeatedly represented multiple times before this Tribunal that the Hon’ble NCLAT has granted stay in

the matter and as such he could not proceed with the CIRP process in respect of the Corporate Debtor.

14. Further, it is also required to be noted that the erstwhile IRP apart from making a public announcement and constituting the CoC, has not carried out further process as contemplated under the provisions of IBC, 2016. It is appalling to note here that for a period of over 3 years, only 3 CoC meetings have been conducted by the erstwhile IRP. It is also seen from the averments made in the Application that the Corporate Debtor is a going concern and if the erstwhile IRP would have conducted the CIRP in a time-bound process, by this time the Corporate Debtor would have fetched a prospecting Resolution Applicant, however without taking any steps and upon acting on the wrong notion that the Hon'ble NCLAT has granted stay on the CIRP process, the erstwhile IRP was sitting on the assets of the Corporate Debtor for a period of more than 3 years and thereby resulting in the destruction of the value of the assets of the Corporate Debtor.

15. This act of the erstwhile IRP is viewed very seriously by this Tribunal and is required to be strongly reprimanded. The Registry of this Tribunal is directed to forward a copy of this Order to IBBI for their records and further actions to enquire into the conduct and dereliction of duties of the erstwhile IRP.”

- 2.1.4 In view of the above, the Board was of the *prima facie* view that Mr. Muthuiah Thevar Rajapandian has contravened Section 208(2)(a) and (e) of the Code, Regulation 40A of CIRP Regulations, and Regulations 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 2, 12, 13 and 14 of the Code of Conduct specified thereunder.

Submissions by Mr. Muthuiah Thevar Rajapandian

- 2.1.5 Mr. Muthuiah Thevar Rajapandian has submitted that similar situation existed in another case of CIRP of M/s Green Peace Construction Private Limited where also he was appointed as IRP. There also after the admission of insolvency application, the promoters had approached NCLAT against the admission order and the NCLAT vide its Order dated 26.09.2018 had made similar interim order, as made in the present case. Further, on a later date, the Hon'ble NCLAT had directed that any action taken by the IRP including the advertisement published in the newspaper calling for applications shall be declared illegal and set aside. Mr. Muthuiah Thevar Rajapandian has submitted that he had relied on the above-said NCLAT Orders in the matter of M/s Green Peace Construction Private Limited and did not take any further steps in the CIRP of present matter too since the appeal application was pending.
- 2.1.6 Mr. Muthuiah Thevar Rajapandian has further submitted that due to non-clarity in the order pronounced by NCLAT, in the appeal by the suspended director pending before the Hon'ble NCLAT, the error had taken place which was purely on account of wrong interpretation and

understanding of the provision by him taking the previous CIRP proceeding in M/s Green Peace Constructions Private Limited handled by him.

Analysis and Findings

2.1.7 The DC notes that Mr. Muthuiah Thevar Rajapandian has relied on the Hon'ble NCLAT Order dated 26.09.2018 in the matter of M/s Green Peace Construction Pvt. Ltd. (Company Appeal (AT) (Insolvency) No. 572 of 2018) to justify his inaction in the CIRP of the CD.

2.1.8 The DC has perused the said Hon'ble NCLAT Order, the relevant para of which is as follows:

“Post the matter ‘for admission (After Notice)’ on 9th October 2018.

In the meantime, the ‘Adjudicating Authority’ or the ‘Interim Resolution Professional’ will not publish any notice in the newspapers and ‘Interim Resolution Professional’ will ensure that the company remains going concern and the manufacturing and production of the company do not suffer, payment of wages to the employees/workmen are made on time and if any material is supplied during ‘corporate resolution process’, the payment may be made to the supplier. The Insolvency Resolution Professional will take help of (suspended) Board of Directors. The Banks having account of the corporate debtor will cooperate with the ‘Insolvency Resolution Professional’ to ensure compliance of this order.”

2.1.9 In its later hearing on 07.05.2019, the Hon'ble NCLAT had set aside the admission order against M/s Green Peace Construction Limited on ground that the applicant was not an operational creditor. Further, Hon'ble NCLAT had ordered that –

“10. In effect, the order(s), passed by the Adjudicating Authority appointing any ‘Interim resolution Professional’, declaring moratorium, freezing of account, and all other order(s) passed by the Adjudicating Authority pursuant to impugned order and action, if any, taken by the ‘Interim Resolution Professional’, including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside.....”

2.1.10 Mr. Muthuiah Thevar Rajapandian has sought to rely on this order of NCLAT to justify his inaction in the CIRP period. However, the DC observes a stark difference between the NCLAT Order dated 26.09.2018 in the matter of M/s Green Peace Construction Pvt. Ltd. and NCLAT Order dated 18.10.2019 in the matter of Unique Roof Private Limited. While in the matter of

M/s Green Peace Construction Limited the Hon'ble NCLAT had specifically directed the IRP not to publish any notice in the newspaper, the same was not directed in the matter of the CD.

2.1.11 The DC also notes that the NCLAT in its Order dated 18.10.2019 had nowhere stayed the CIRP proceedings of the CD. Therefore, there was no estoppel on Mr. Muthuiah Thevar Rajapandian from performing his statutory duties under the Code and Regulations framed thereunder. Even while replying to the second contravention in the SCN, Mr. Muthuiah Thevar Rajapandian has himself admitted that while reporting the status of ongoing CIRP through CIRP Form 7, he had mentioned the reason for non-completion of CIRP in 180 days as "Any Other" and not as "Stay". Further, he had conducted the first meeting of the Committee of Creditors on 08.11.2019 after the Order dated 18.10.2019 by Hon'ble NCLAT. It clearly reflects that he knew that the NCLAT has not stayed the CIRP and therefore his subsequent inaction in carrying forward the CIRP is without any basis and unjustified.

2.1.12 The DC further observes that the case relied upon by Mr. Muthuiah Thevar Rajapandian is on a completely different footing as in the case of M/s Green Peace Construction Private Limited, there was a specific direction to not proceed even with the first step of CIRP i.e. public announcement. This was not the case in the case of the CD. In the event, where the Code envisages a time bound mechanism for completion of CIRP and entrusts a resolution professional with various important functions under the Code such as keeping the corporate debtor a going concern, appointment of valuers and transactions auditors, preparation and publication of information memorandum and expression of interest, etc, Mr. Muthuiah Thevar Rajapandian did not take any step to proceed in the CIRP despite there being no direction to stop the CIRP. Even if there was any confusion to Mr. Muthuiah Thevar Rajapandian about the order of NCLAT, a clarification should have been sought by him from the NCLAT, but he failed to do so.

2.1.13 Therefore, the DC finds that Mr. Muthuiah Thevar Rajapandian failed to proceed with CIRP of the CD without any justifiable reason and also failed in taking any steps for seeking any clarification, in case he was not clear about the NCLAT order dated 18.10.2019, although the said order in itself was quite clear.

2.1.14 In view of the above, the DC finds Mr. Muthuiah Thevar Rajapandian in contravention of Section 208(2)(a) and (e) of the Code, Regulation 40A of CIRP Regulations, and Regulations 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 2, 12, 13 and 14 of the Code of

Conduct specified thereunder.

2.2 Non- Convening of Meetings of Committee of Creditors (“CoC”) despite request from CoC member:

2.2.1 Regulation 18 of the CIRP Regulations (prior to amendment dated 09.02.2022) provides as under:

“18. Meetings of the committee.

A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty three per cent of the voting rights.”

2.2.2 Further Regulation 18 of the CIRP Regulations (Amended as on 09.02.2022) provides as under:

“18. Meetings of the committee.

(1) A resolution professional may convene a meeting of the committee as and when he considers necessary.

(2) A resolution professional may convene a meeting, if he considers it necessary, on a request received from members of the committee and shall convene a meeting if the same is made by members of the committee representing at least thirty three per cent of the voting rights.

(3) A resolution professional may place a proposal received from members of the committee in a meeting, if he considers it necessary and shall place the proposal if the same is made by members of the committee representing at least thirty three per cent of the voting rights.”

2.2.3 The SCN observes that SIDBI, vide letter dated 03.12.2020, 03.06.2022 and 14.06.2022, had requested Mr. Muthuiah Thevar Rajapandian to conduct the second CoC meetings. However, it is noted that even after requests from SIDBI to convene the second CoC meeting, Mr. Muthuiah Thevar Rajapandian failed to conduct the meeting. Mr. Muthuiah Thevar Rajapandian conducted the second CoC meeting only on 12.07.2022, i.e., after the delay of more than 19 months from the first request received from SIDBI in this regard. The SCN states that Mr. Muthuiah Thevar Rajapandian was duty bound to convene the meeting of CoC as and when so required by the FCs having specified voting share. However, the same has not been done by Mr. Muthuiah Thevar Rajapandian despite the fact that SIDBI has a voting share of 73.30%.

2.2.4 In view of the above, the Board was of the *prima facie* view that Mr. Muthuiah Thevar Rajapandian has contravened Section 208(2)(a) and (e) of the Code, Regulation 18 of the CIRP

Regulations, Regulations 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 13 and 14 of the Code of Conduct specified thereunder.

Submissions by Mr. Muthuiah Thevar Rajapandian

- 2.2.5 Mr. Muthuiah Thevar Rajapandian submitted that according to the referred NCLAT Order, he has been permitted within the scope of IRP to ensure that the company remains going concern and further direction was not provided in the said order. He asserts that he has submitted CIRP form 7 regularly on a monthly basis latest on 27.12.2022. In CIRP form, he had mentioned the reason as “Any Other” not as “Stay”.
- 2.2.6 Mr. Muthuiah Thevar Rajapandian further submitted that the first CoC meeting was held on 08.11.2019 where the secured financial creditors had deferred the CoC meeting and further CoC meetings has not been held due to the appeal made by the suspended director was pending before Hon’ble NCLAT. The second and third meeting was held on 12.07.2022 after getting agenda from SIDBI (secured financial creditor) and 20.07.2022 respectively in which the resolution for change of IRP was passed.

Analysis and Findings

- 2.2.7 As observed in the previous paragraphs, the Hon’ble NCLAT *vide* its Order dated 18.10.2019 had nowhere stayed the CIRP proceedings of the CD. Therefore, the plea of Mr. Muthuiah Thevar Rajapandian to not take conduct any further CoC meeting because of pending appeal before Hon’ble NCLAT is misplaced and cannot be accepted by this DC.
- 2.2.8 Further, since there was no stay on CIRP proceedings, there was no reason for Mr. Muthuiah Thevar Rajapandian to not accept the request of financial creditor *viz.* SIDBI which had 73.30% voting share, with respect to conduct of CoC meeting.
- 2.2.9 The DC notes that it is the duty of the resolution professional to conduct regular meetings of the CoC for taking approval of the CoC in respect of the processes and for approval of CIRP cost etc. It is for RP to take the initiative to conduct the meetings. Here in fact the CoC member has asked for conduct of the CoC meeting which he failed to convene despite the request coming from a creditor holding voting share of more than 73% in violation of Regulation 18 of the CIRP Regulations.
- 2.2.10 In light of the above, the DC finds that Mr. Muthuiah Thevar Rajapandian has contravened

Section 208(2)(a) and (e) of the Code, Regulation 18 of the CIRP Regulations, Regulations 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 13 and 14 of the Code of Conduct.

3. ORDER

- 3.1. In view of the foregoing, the DC in exercise of the powers conferred under Section 220 of the Code read with Regulation 13 of the Inspection and Investigation Regulations and Regulation 11 of the IP Regulations hereby suspends the registration of Mr. Muthuiah Thevar Rajapandian (Registration No. IBBI/IPA-003/IP-N00090/2017-2018/10854) for a period of three years.
- 3.2. This Order shall come into force after expiry of 30 days from the date of its issuance.
- 3.3. A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Cost Accountants of India where Mr. Muthuiah Thevar Rajapandian is enrolled as a member.
- 3.4. A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Muthuiah Thevar Rajapandian is providing his services, if any, and the respective CoC/SCC, as the case may be, shall decide about continuation of existing assignment of Mr. Muthuiah Thevar Rajapandian.
- 3.5. A copy of this order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal, New Delhi, for information.
- 3.6. 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, IBBI
Insolvency and Bankruptcy Board of India

Dated: 05 June 2024

Place: New Delhi