

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/230/2024

23 July 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/7/2023-IBBI dated 26.10.2023, issued to Mr. S. Diraviam, an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/PA-002/IP-N00616/2018-2019/11889, who is a Professional Member of the Insolvency Professional Agency of Institute of Company Secretaries of India and having residential address recorded with IBBI as No. 23 Annar Flats, E.B. Office Road, Mogappair East, Chennai, Tamil Nadu – 600037.

1. Background

- 1.1 The Hon'ble National Company Law Tribunal, Chennai Bench (AA) vide its Order dated 29.05.2019, admitted the application filed by M/s. Eden Garden Residential Owners Associations under Section 7 of the Code for initiating corporate insolvency resolution process (CIRP) of M/s. Evocon Private Limited (Corporate Debtor/CD). Mr. S. Diraviam was appointed as Interim Resolution Professional (IRP) *vide* the above-said Order and later confirmed as the Resolution Professional.
- 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. S. Diraviam has contravened several provisions of the the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and Inspection and Investigation Regulations and therefore issued the SCN to Mr. S. Diraviam on 26.10.2023. The reply of Mr. S. Diraviam on the SCN was received by the Board on 17.11.2023.
- 1.4 The SCN and response of Mr. S. Diraviam to the SCN were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. S. Diraviam availed the opportunity of personal

hearing before the DC through virtual mode on 17.05.2024.

2. Alleged Contraventions, Submissions of Mr. S. Diraviam and Findings of DC

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

2.1 Non-Preservation of the records and non-cooperation with IA.

- 2.1.1 Regulation 7(2)(g) of the IP Regulations provides that the Insolvency Professional shall maintain records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment. Further, the IBBI Circular No. IBBI/CIRP/38/2021 dated 06.01.2021 *inter alia* requires an IP to preserve- (a) an electronic copy of all the records (physical and electronic) for a minimum period of eight years, and (b) a physical copy of physical records for minimum period of three years, from the date of completion of the CIRP or the conclusion of any proceeding related to the CIRP, before the Board, the Adjudicating Authority (AA), Appellate Authority or any Court, whichever is later. Regulation 8(4) of Inspection and Investigation Regulations provides that it shall be the duty of the service provider and an associated person to produce before the Investigating Authority such records in his custody or control and furnish to the Investigating Authority such statements and information relating to its activities within such time as the Investigating Authority may require. Clause 19 of the Code of Conduct of the IP Regulations (Code of Conduct) provides that an Insolvency Professional must provide all the records as may be required by the Board or the Insolvency Professional Agency (IPA) with which he is enrolled with.
- 2.1.2 It was observed that *vide* notice of investigation dated 30.08.2022, the IA sought Mr. S. Diraviam's reply on certain specific queries. On his failure to reply to the said notice of investigation, a reminder was sent to him on 17.10.2022 for sending reply to the notice of investigation. *Vide* email dated 18.10.2022, Mr. S. Diraviam replied by merely stating that he could not retrieve emails pertaining to 2019 when 4th meeting of Committee of Creditors (CoC) was convened. The SCN therefore finds that Mr. S. Diraviam failed to preserve and maintain records of CIRP of the CD and rendered non-cooperation to the IA by not replying to specific queries of the IA.
- 2.1.3 In view of the above, the Board was of the *prima facie* view that Mr. S. Diraviam has *inter alia* violated Regulations 7(2)(g) of the IP Regulations read with IBBI Circular IBBI/CIRP/38/2021

dated 06.01.2021, Regulation 8(4) of Inspection and Investigation Regulations and Regulation 7(2)(h) of IP Regulations read with Clause 14 and 19 of the Code of Conduct.

Submissions by Mr. S. Diraviam

- 2.1.4 Mr. S. Diraviam has not submitted his explanation to the alleged contravention in his reply to the SCN. He has submitted that he has crossed the age of 71 years and stepped in to 72 years with diabetic related issues and is no longer eligible for any insolvency assignments.

Analysis and Findings

- 2.1.5 The DC notes that regulation 7(2)(g) of the IP Regulations makes the registration granted to an Insolvency Professional conditional on the ground that he should maintain records of all assignments undertaken by him under the Code for at least three years from the completion of such assignment. Further, the IBBI *vide* its Circular dated 06.01.2021 had specified that the retention of electronic copy of all records pertaining to a CIRP by an IRP or RP, under regulation 39A of the CIRP Regulations, should be for a minimum period of eight years.
- 2.1.6 The DC further notes that the CIRP of the CD in the instant matter commenced on 26.05.2019 and completed with the approval of resolution plan by the AA *vide* its Order dated 04.06.2021. Therefore, when the notice of investigation was served to Mr. S. Diraviam on 30.08.2022, it was incumbent on him to have possession of all the documents related to the CIRP. However, Mr. S. Diraviam responded to the notice of investigation by replying the following to the IA –
- “As regards your email which I received yesterday, I could not retrieve my emails pertaining to 2019 in which period the 4th COC meeting was convened.”*
- 2.1.7 Therefore, the above communication by Mr. S. Diraviam reflects contravention of regulation 7(2)(g) of the IP Regulations and also the IBBI Circular dated 06.01.2021. However, the DC also notes that in his reply to the SCN dated 14.11.2023, Mr. S. Diraviam has submitted that he had checked his records with respect to the allegations mentioned in the SCN and thereafter gave an explanation on the merits of the SCN. This conflicts with the earlier response submitted by him to the IA.
- 2.1.8 In light of the above, the DC observes that Mr. S. Diraviam had failed in his statutorily mandated duty of cooperating with the IA by providing the documents sought by the IA. Therefore, the DC finds Mr. S. Diraviam is in contravention of regulation 8(4) of Inspection

and Investigation Regulations and Regulation 7(2)(h) of IP Regulations read with Clause 14 and 19 of the Code of Conduct.

2.2 Delay in circulation of minutes of 4th CoC Meeting:

- 2.2.1 Regulation 25(5)(a) of CIRP Regulations requires the Resolution Professional (RP) to circulate the minutes of meeting by electronic means to all members of the CoC and the Authorised Representative (AR), if any, within forty-eight hours of conclusion of the meeting.
- 2.2.2 It was observed that the CIRP of the CD was initiated by the Adjudicating Authority (AA) *vide* its order dated 29.05.2019 and Mr. S. Diraviam was appointed as IRP and then RP to conduct the CIRP. It was further observed that 4th meeting of CoC was conducted by Mr. S. Diraviam on 20.12.2019 but Mr. S. Diraviam forwarded the minutes of meeting of the 4th CoC to AR on 27.12.2019 i.e. with a delay of 7 day whereas Mr. S. Diraviam was required to circulate it within 48 hours of conclusion of CoC meeting.
- 2.2.3 In view of the above, the Board was of the *prima facie* view that Mr. S. Diraviam has *inter alia* violated Regulation 25(5)(a) of the CIRP Regulations read with Clause 13 and 14 of Code of Conduct.

Submissions by Mr. S. Diraviam

- 2.2.4 Mr. S. Diraviam has submitted that the 4th CoC Meeting was held on 20.12.2019 and the minutes was circulated on 27.12.2019 (wrongly written as 27.12.2023 in the reply to SCN) for which the SCN has been sent to him. He also submitted that the delay was not with the intention but due to factors that affected his family with COVID related disturbances which was peak at that time. He further submitted that due to medical issues and consequent demise of his sister, there was disturbances leading to delay in circulation of minutes. Mr. S. Diraviam has also provided the sequence of events of CIRP of CD where the resolution plan was submitted for approval of AA before the expiry of 180 days.

Analysis and Findings

- 2.2.5 Regulation 25 the CIRP Regulations provides as follows:

“25. Voting by the committee.

(4) *****

(5) The resolution professional shall-

(a) **circulate the minutes of the meeting by electronic means to all members of the committee and the authorised representative, if any, within forty-eight hours of the conclusion of the meeting; and**

(b) *******”**

2.2.6 The DC notes that there was delay of four days in circulation of minutes of the meeting, which is also accepted by Mr. S. Diraviam in his reply. Although, contrary to what has been claimed by Mr. S. Diraviam, the advent and effect of COVID was not so pronounced in the month of December 2019, the DC is inclined to take a lenient view on the lapse of Mr. S. Diraviam on the ground that he was facing medical issues in his family and also apparently no major prejudice has been caused by such delay in circulation of minutes. Therefore, the reply of Mr. S. Diraviam is accepted in respect of this contravention.

3. ORDER

3.1. The Board was established under section 188 of the Code for the purposes of the Code. The Board has a statutory mandate to oversee the processes under the Code and monitor the performance of Insolvency Professionals, who are the main driving force of such processes. Section 196 of the Code vests powers and functions on the Board to regulate and monitor the performance of Insolvency Professionals. The relevant provisions under section 196 are as follows:

“196. Powers and functions of Board. -

(1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely: -

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;

(aa) promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code;

....

(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;

....

(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;

.....

(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;”

3.2. The monitoring of regulated entities through inspections and investigations is the most important activity exercised by the Board. It is the duty of all regulated entities to cooperate with the Board in exercising its statutory mandate for the overall purpose of achieving the objectives of the Code. Not extending support to the Board is an act of dissidence by such an Insolvency Professional and makes mockery of the statutory obligations enshrined under the Code. Therefore, the same needs to be viewed sternly and strictly. It is necessary that a deterrence be created to ensure that information sought by the Board is provided by the IP and therefore a suitable penalty needs to be imposed in cases where the IPs in defiance to their statutory obligations, do not cooperate with the Board.

3.3. 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 IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby-

a) considering that he has already crossed the age of 70 years and therefore not eligible to hold authorization of assignment, warns Mr. S. Diraviam to be cautious and abide by the provisions of the Code and regulations framed thereunder, and

b) imposes a penalty of Rs. 50,000/- (Rs. Fifty thousand only) on Mr. S. Diraviam and directs him to deposit the penalty amount directly to the Consolidated Fund of

India (CFI) under the head of “penalty imposed by IBBI” on <https://bharatkosh.gov.in> within 45 days from the date of issue of this order and submit a copy of the transaction receipt to the Insolvency and Bankruptcy Board of India.

- 3.4. This Order shall come into force after expiry of 30 days from the date of its issuance.
- 3.5. A copy of this order shall be forwarded to the Insolvency Professional Agency of Institute of Company Secretaries of India where Mr. S. Diraviam is enrolled as a member.
- 3.6. 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.
- 3.7. Accordingly, the show cause notice is disposed of.

Sd/-
(Sandip Garg)
Whole Time Member
Insolvency and Bankruptcy Board of India

Dated: 23 July 2024

Place: New Delhi