

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/245/2024

14th August 2024

ORDER

This Order disposes the Show Cause Notice (SCN) No. IBBI/IP/INSP/2021/83/540/3606 dated 31st May 2022 issued to Mr. Mudappallur Varieth Gangadharan, who is a Professional Member of Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI) and an Insolvency Professional ('IP') registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-001/IP-00438/2017-2018/10761

1. Background

- 1.1 Mr. Mudappallur Varieth Gangadharan was appointed as an interim resolution professional ('IRP') for the corporate insolvency resolution process ('CIRP') in the matter of Padmaadevi Sugars Limited, Corporate Debtor ('CD') *vide* order of the National Company Law Tribunal, Chennai Bench, New Delhi ('AA') dated 15.10.2018 which admitted an application for CIRP under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('Code').
- 1.2 The IBBI, in exercise of its powers under section 218 of the Code read with Regulation 3(3) and 3(4) of the IBBI (Inspection and Investigation) Regulations, 2017 ('Inspection Regulations') appointed an Inspecting Authority (IA) to conduct the inspection of Mr. Mudappallur Varieth Gangadharan. A draft inspection report (DIR) dated 12.10.2021, prepared by the IA, was shared with Mr. Mudappallur Varieth Gangadharan, to which he submitted reply dated 20.10.2021. The IA submitted the Inspection Report in accordance with regulation 6(4) of the Inspection Regulations to IBBI on 18.11.2021.
- 1.3 Based on the findings in the inspection report, the IBBI formed a *prima facie* view that Mr. Mudappallur Varieth Gangadharan contravened the provisions of the Code and Regulations made thereunder and issued the SCN to Mr. Mudappallur Varieth Gangadharan

on 31.05.2022, Mr. Mudappallur Varieth Gangadharan replied to the SCN *vide* email dated 21.06.2022

1.4 The IBBI referred the SCN and response of Mr. Mudappallur Varieth Gangadharan to the SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Mudappallur Varieth Gangadharan availed an opportunity of personal hearing through virtual mode before the DC on 20.07.2022. The DC considered the SCN, the reply to SCN, oral submissions of Mr. Mudappallur Varieth Gangadharan, other material available on record and disposed of the SCN *vide* order dated 28.07.2022, suspending the registration of Mr. Mudappallur Varieth Gangadharan for a period of one year.

1.5 Aggrieved by the DC order, Mr. Mudappallur Varieth Gangadharan preferred a Writ Petition bearing no. W.P. (C) 13731/2022 before the Hon'ble High Court of Delhi. *Vide* order dated 10.04.2024, Hon'ble High Court of Delhi set aside the DC order dated 28.07.2022 and remanded the matter back to IBBI, directing IBBI to supply copy of the Final Inspection Report to Mr. Mudappallur Varieth Gangadharan. Hon'ble High Court of Delhi further directed Mr. Mudappallur Varieth Gangadharan to file further or substituted reply to the SCN and IBBI was directed to decide the matter within four weeks in accordance with the Regulations. The copy of the Final Inspection Report was sent to Mr. Mudappallur Varieth Gangadharan on 14.05.2024. When no further or substituted reply was received by IBBI from Mr. Mudappallur Varieth Gangadharan, on 24.06.2024, an email was sent to Mr. Mudappallur Varieth Gangadharan, requesting him to send reply within a week. Mr. Mudappallur Varieth Gangadharan was further reminded over phone on 09.08.2024 to send the reply, to which he responded and sent reply on 10.08.2024. In the said reply nothing new was stated on merit. Thereafter, an opportunity of personal hearing was given to Mr. Mudappallur Varieth Gangadharan through virtual mode on 12.08.2024.

2. Alleged Contraventions and Submissions

The contraventions alleged in the SCN and Mr. Mudappallur Varieth Gangadharan's written and oral submissions thereof are summarized as follows.

2.1 Non- filing for application for avoidance transaction

2.1.1 It was observed that the auditor to conduct the forensic audit was appointed by Mr. Mudappallur Varieth Gangadharan in the CIRP of the CD. The forensic auditor, in its report pointed out various avoidable transactions, defined under sections 43, 45, 50 and 66 of the code. The said report was discussed in detail in the ad-hoc meeting of the stakeholders/ committee of creditors held on 3rd February 2021 and 24th March 2021. In the said adhoc CoC meeting held on 24th March 2021, Mr. Mudappallur Varieth Gangadharan requested CoC to adopt the forensic report. In his response to the DIR, in para 22, Mr. Mudappallur Varieth Gangadharan admitted that Forensic Audit Report disclosed avoidable transactions.

2.1.2 As per section 25(2)(j) of Code, it is the duty of the RP to file application for avoidance of transactions in accordance with Chapter III, if any. Regulation 35A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) mandates resolution professional to apply before AA for appropriate relief after determination of transactions mentioned under sections 43, 44, 50 and 66 of Code. In this case, although Mr. Mudappallur Varieth Gangadharan had requested CoC to adopt the forensic audit report pointing out various avoidable transactions, he failed to file the necessary application before the AA.

2.1.3 In view of the above, the Board held the *prima facie* view that Mr. Mudappallur Varieth Gangadharan, *inter-alia*, violated Sections 25(2)(j), 43, 45, 50 & 66 of Code read with Regulation 35A of CIRP Regulation and clauses 1 and 14 of Code of Conduct prescribed under regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) (Code of Conduct).

2.2 Submissions by Mr. Mudappallur Varieth Gangadharan.

2.2.1 Mr. Mudappallur Varieth Gangadharan submitted in his reply to the SCN that Forensic Audit report disclosed avoidable transactions. He further accepted the fact that one of the financial Creditor (FC) i.e., Mr. E. Shanmugam, at the 3rd CoC meeting, had raised concerns regarding the misappropriation of assets of the CD and asserted that important parts of the machinery were stolen when assets of the CD were under the custody of the

Banks before the commencement of CIRP. He further submitted in his reply that the banker did not accept the Forensic Audit Report and had they accepted the report, he would have filed the PUFEE application.

2.2.2 Mr. Mudappallur Varieth Gangadharan submitted following reasons for suggesting filing of a complaint with CBI instead of filing application before AA with regard to the avoidance transactions:

- (a) The Suspended Directors were absenting themselves from CoC meetings or in cases before the AA, largely for reasons of being in custody pending trial in certain other connected proceedings.
- (b) Further, the attachment order dated 01.11.2019 issued by the Income Tax Department in respect of the CD indicated a fraudulent activity of wider proportions which may have far reaching consequences and an application for avoidance transaction in this case may not be entirely appropriate/fruitful.
- (c) Furthermore, the misappropriation of assets appeared to have happened during the time when Banks had custody of the assets of the Company. He stated that while this was no suggestion that the Bank may be involved in the misappropriation (in view of the possession being symbolic), a wider and deeper investigation in terms of CrPC was needed to be conducted to avoid fading away of evidences.

2.2.3 He further submitted that forensic audit report had various lapses and therefore was required to conduct more such audit. He submitted that he proposed 3 more quotes for the audit to be conducted but this proposal was rejected by the CoC. He submitted that CoC mentioned that since there are no books available, there is no point in raising this agenda.

2.2.4 He also submitted that he suggested banks to expedite this issue through their own bank statements to find avoidance transactions carried out by the CD as he did not have the books of the CD available with him.

2.2.5 Mr. Mudappallur Varieth Gangadharan stated that he did not contravene any provisions of the Code and only exercised his professional discretion in terms of the Code. He further submitted that he has record of resolving big companies and has a clean professional record. He submitted that had he been appointed liquidator, he would have definitely filed

avoidance application but now it falls under the responsibility of the incoming liquidator.

- 2.2.6 After receiving the Final Inspection Report, no new defence was taken by Mr. Mudappallur Varieth Gangadharan, in his further reply, received by IBBI on 10.08.2024.

2.3 Analysis and Findings.

- 2.3.1 As per the Code, it is the duty of the RP to file an avoidance application on finding transactions that may prejudice the interests of the CD and that of the other stakeholders. Thus, the Code and Regulation 35A of the CIRP Regulations clearly specify that onus of filing avoidance transactions rests with the RP. For filing an avoidance transaction application, CoC's permission is neither necessary nor a precondition as a duty is imposed on the RP to file such an application with the Adjudicating Authority to preserve and protect the assets of CD. The Resolution professional is an expert who is under an obligation as per Regulation 35A of CIRP Regulations to form an opinion whether the corporate debtor has been subjected to any transaction covered under sections 43, 45, 50 or 66. Thereafter, he shall make a determination of transactions in terms of these provisions and file an application before the AA for appropriate relief. For taking such action, it is not required that the forensic audit report should be adopted by the CoC. Duty to determine these transactions and file an application has been entrusted to RP and cannot be shifted to any other person.
- 2.3.2 The DC further notes that pursuing another action like filing a complaint before CBI can be taken up independently. This does not absolve the RP from following his obligations under the Code. This act of Mr. Mudappallur Varieth Gangadharan in omitting to file an application in respect of avoidance transactions as he was of the view that a complaint may be filed with CBI is not consistent with the provisions of the Code.
- 2.3.3 In view of the above, the DC finds that the act of Mr. Mudappallur Varieth Gangadharan in not filing the application for transaction under Sections 43, 45, 50 & 66 is in clear violation of provisions of Sections 43, 45, 50 & 66 read with Regulation 35A of the CIRP Regulations, and clauses 1 and 14 of Code of Conduct prescribed under IP Regulations and holds the contravention.

2.4 Abrupt termination of e-voting for 10th CoC meeting

- 2.4.1 It was observed that after discussing various agendas listed for discussion in the 10th CoC meeting held on 7th August 2020, resolutions including one for Mr. Mudappallur Varieth Gangadharan's appointment as Liquidator were put for e-voting. It was however, observed that Mr. Mudappallur Varieth Gangadharan abruptly suspended/terminated the e-voting before the scheduled closure and before all the financial creditors could vote. Two of the financial creditors, namely Indian Overseas Bank (holding 63.80% vote share in CoC) and Bank of India (holding 32.75% vote share in CoC) filed IA/650/IB/2020 before AA, inter-alia, stating that e- voting facilities for the 10th CoC meeting were to be made available by Mr. Mudappallur Varieth Gangadharan from 14th August 2020 to 18th August 2020, however Mr. Mudappallur Varieth Gangadharan suspended/terminated the e-voting on knowledge that Bank of India had voted against his continuation as Liquidator and proposed another insolvency professional as Liquidator. The same was also adversely observed by the AA.
- 2.4.2 It is thus evident that Mr. Mudappallur Varieth Gangadharan abruptly terminated the e-voting facility for 10th CoC meeting on ground, *inter-alia*, that one of the CoC members wanted to appoint another insolvency professional as liquidator.
- 2.4.3 Regulation 26 of CIRP Regulations requires a resolution professional to provide each member of the CoC the means to exercise its vote by either electronic means or through electronic voting system. Further, regulation 25(5) of CIRP Regulations, inter-alia, requires resolution professional to seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes. The act of Mr. Mudappallur Varieth Gangadharan to terminate the voting prematurely, when an agenda bearing his interest was being considered, is mala-fide in nature.
- 2.4.4 In view of the above, the Board held a prima facie view that Mr. Mudappallur Varieth Gangadharan, *inter alia*, violated regulation 25(5) and 26 of CIRP Regulations and also acted in a mala-fide manner with respect to voting for his appointment as liquidator in

violation of clauses 1, 2, 3, 5 and 14 of Code of Conduct.

2.5 Submissions by Mr. Mudappallur Varieth Gangadharan.

- 2.5.1 With regard to the aforesaid contravention, Mr. Mudappallur Varieth Gangadharan submitted that the voting was stopped because the fresh agenda for appointment of Mr. C. Ramasubramaniam as the Liquidator, was introduced by Bank of India *de hors* the meeting of the CoC and contrary to the agreed agenda items of the CoC at the time of voting, i.e., on 14.08.2020. Admittedly, since application for extension of CIRP Period filed by Mr. Mudappallur Varieth Gangadharan was pending and in the absence of an order extending time, he would be rendered *functus officio*, and thus it would not have been appropriate to proceed with the voting.
- 2.5.2 He submitted that he fulfilled all the duties of resolution professional in a very diligent manner and therefore, did not foresee that he would be appointed as the liquidator in this CIRP. He further submitted that the 10th CoC meeting was held after expiry of CIRP period when application for extension of CIRP was pending with AA. Hence this meeting was illegal and any voting done with respect to such meeting also would be illegal, hence he stopped the voting.

2.6 Analysis and Findings.

- 2.6.1 The DC notes that the CIRP period expired on 17.01.2020 and Mr. Mudappallur Varieth Gangadharan with approval of the CoC approached the AA for extension of the CIRP period. While the application for an extension of CIRP period remained pending, the CoC in its 10th CoC meeting held on 07.08.2020 recommended liquidation of the CD. In continuation to this, CoC decided to take up the remaining agenda's, i.e., regarding the appointment of RP as a liquidator through e-voting. In the meantime, Mr. Mudappallur Varieth Gangadharan terminated the e-voting facility before all CoC members could cast the votes on agenda for the meeting.
- 2.6.2 The DC also notes that AA while passing liquidation order dated 20.04.2021 for the CD observed that “...IA/650/IB/2020 filed by the Indian Overseas Bank and Bank of India, have raised various allegation against the present Applicant/RP. The Bankers namely, Indian Overseas Bank holds 63.80 % of the voting rights of the CoC and Bank of India

holds 32.75

% of the voting rights of the CoC and together they hold 96.55 % of the voting rights of the CoC of the Corporate Debtor.

There are lot of allegations of mis-management filed by these applicants. The Applicants have also brought to the notice of this Adjudicating Authority that the e-voting facility of 10th CoC meeting on 07.08.2020 was not conducted in the appropriate manner. There has been tremendous lapses on the part of the Applicant/RP.”

2.6.3 Further, the AA refused to appoint Mr. Mudappallur Varieth Gangadharan as the liquidator and in his place appointed – Mr. C. Ramasubramaniam as the liquidator. The DC notes that RP is required to seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with the provision of regulation 25(5) & 26 of the CIRP Regulation. Regulation 25(5) states that voting window shall be kept open for at least twenty-four hours from the circulation of the minutes. From the documents available on records, the DC notes that provision of Regulation 25(5) & 26 of the CIRP Regulation were not followed. Termination of the e-voting facility for the 10th CoC meeting as accepted by Mr. Mudappallur Varieth Gangadharan on the grounds that one of the CoC member wanted to appoint another IP as liquidator is not in consonance with provisions of the Code. The act of terminating the voting abruptly prevented CoC from taking a decision which would have gone against the interest of Mr. Mudappallur Varieth Gangadharan. This action of terminating the voting is clearly taken with an intent to serve his own interest, disregarding the interest of CIRP, CD and other creditors.

2.6.4 With regards to the submission of Mr. Mudappallur Varieth Gangadharan that voting was stopped abruptly because CoC meeting was scheduled beyond CIRP period and therefore it was illegal, The DC notes that this argument has been made by Mr. Mudappallur Varieth Gangadharan as an afterthought as the timing of meeting and voting were known to the Mr. Mudappallur Varieth Gangadharan beforehand. If the meeting was beyond the CIRP time, the same should have not been initiated or conducted at all by Mr. Mudappallur Varieth Gangadharan

2.6.5 DC also notes that Mr. Mudappallur Varieth Gangadharan had filed the liquidation

application without the mandate from CoC. It is also noted that one of the other agenda items for the same meeting was also to get the action of filing the liquidation application ratified by the CoC. If the submission of Mr. Mudappallur Varieth Gangadharan that the meeting is illegal as the same was beyond time, is taken into consideration, even the ratification of the liquidation application made at the same meeting will not stand. Therefore, this would imply that IP's act of filing the liquidation application has not been ratified by CoC and the same will then have to be viewed even more adversely. DC notes that Mr. Mudappallur Varieth Gangadharan is making submission as an afterthought with a view to support his wrongful conduct of stopping the voting as it affects his interest.

2.6.6 Thus, the DC is of the view that Mr. Mudappallur Varieth Gangadharan has contravened the provision of Regulation 25(5) & 26 of the CIRP Regulation and clauses 1, 2, 3, 5 and 14 of Code of Conduct.

3. Order

3.1 In view of the foregoing contraventions, the DC, in exercise of the powers conferred under section 220 of the Code read with Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 and Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017, hereby, holds that Mr. Mudappallur Varieth Gangadharan contravened provisions of the Code and Regulations made thereunder as discussed above and suspends the registration of Mr. Mudappallur Varieth Gangadharan having registration no. IBBI/IPA-001/IP-00438/2017- 2018/10761, for a period of 18 (eighteen) months.

3.2 This order will come into force from 28.08.2022, i.e. the date when the DC order dated 28.07.2022 had come into force, prior to getting the same set aside by order of the Hon'ble High Court dated 10.04.2024.

3.3 A copy of this order shall be sent to the CoC/ Stakeholders Consultation Committee (SCC) of all the Corporate Debtors in which Mudappallur Varieth Gangadharan is providing his services, and the respective CoC/SCC, as the case may be, will decide about continuation of existing assignment of Mudappallur Varieth Gangadharan.

3.4 A copy of this order shall be forwarded to the Indian Institute of Insolvency

Professionals of ICAI of which Mr. Mudappallur Varieth Gangadharan is enrolled as a member.

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

Dated: 14th August 2024

Place: New Delhi