

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)

No. IBBI/DC/254/2024

11.12.2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/156/2022-IBBI/155/695 dated 03.02.2023, issued to Mr. Ramasamy Shanmuggam who is a Professional Member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00811/2017-2018/11378.

1. Background

- 1.1 The National Company Law Tribunal, Chennai, (AA) had admitted the application under Section 9 of the Code, filed by the operational creditor M/s Foseco India Ltd. for initiating Corporate Insolvency Resolution Process (CIRP) of M/s RLS Alloys Private Limited (CD) *vide* Order dated 03.12.2018 and Mr. Ramasamy Shanmuggam was appointed as Interim Resolution Professional (IRP) *vide* the same order. Mr. Ramasamy Shanmuggam was proposed to be appointed as (Resolution Professional) RP in the first meeting of Committee of Creditors (CoC) held on 18.01.2019. The order for liquidation of the CD was passed on 14.06.2019 and Mr. Ramasamy Shanmuggam was appointed as the liquidator *vide* the same order.
- 1.2 The IBBI, in the exercise of its powers under Section 218 of the Code read with Regulations 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017, appointed an Investigating Authority (IA) to conduct investigation about the observations made by the AA *vide* order dated 02.06.2022, in the matter of liquidation process of the CD.
- 1.3 The IA served a notice of investigation to Mr. Ramasamy Shanmuggam on 23.06.2022. Pursuant to the said notice, Mr. Ramasamy Shanmuggam submitted his reply *vide* email dated 13.07.2022. The IA submitted the investigation report to the IBBI on 04.11.2022. On perusal of the investigation report submitted by the IBBI, the IBBI formed a *prima facie* view that Mr. Ramasamy Shanmuggam contravened the provisions of the Code and Regulations made thereunder and issued the SCN to Mr. Ramasamy Shanmuggam on 03.02.2023. Mr. Ramasamy Shanmuggam submitted his reply to the SCN on 05.03.2023.
- 1.4 The IBBI referred the SCN, and the response of Mr. Ramasamy Shanmuggam to the SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Ramasamy Shanmuggam availed the opportunity of personal hearing through virtual mode before the DC on 25.04.2023. The DC passed order on 16.05.2023, *vide* which registration of Mr. Ramasamy Shanmuggam was suspended for a period of two years.
- 1.5 Mr. Ramasamy Shanmuggam filed Writ Petition before the Hon'ble Delhi High Court challenging the order passed by the DC on 25.04.2023. *Vide* order dated 10.04.2024, the

Hon'ble Delhi High Court remanded the matter back to the Board along with directions to the Board to supply a copy of the Final Inspection Report. The copy of the investigation report which had already been enclosed with the SCN, was again sent to Mr. Ramasamy Shanmuggam vide email dated 15.05.2024.

- 1.6 Mr. Ramasamy Shanmuggam submitted his reply on 16.09.2024 and availed fresh opportunity of personal hearing before the DC through virtual mode on 15.10.2024 wherein he was assisted by Advocate Anoop Prakash.

2. Alleged Contraventions, Submissions of Mr. Ramasamy Shanmuggam and Findings of the DC

Contravention: Conduct of the e-Auction process

- 2.1 Mr. Ramasamy Shanmuggam was appointed as the liquidator in the liquidation process of the CD. He published an e- auction notice dated 10.09.2020 for sale of the properties of the CD on 23.09.2020 with reserve price of Rs.1,06,55,550. It was noted that in the e-auction held on 23.09.2020, he received the highest bid for Rs.15,65,55,550 from Mr. S. Ramalingam and the second highest bid was received from Mr. G. Subramanian for Rs.1,55,55,550. It was noted that Mr. S. Ramalingam, the highest bidder, on 24.09.2020 requested Mr. Ramasamy Shanmuggam for cancellation of e-auction held on 23.09.2020 on the ground that due to error in typing, he inadvertently stated the amount as Rs.15,65,55,550 instead of the actual bid amount as Rs.1,56,55,550.
- 2.2 Mr. Ramasamy Shanmuggam cancelled the auction held on 23.09.2020 and held the auction again on 25.09.2020, without publishing fresh auction notice, fixing the same reserve price of Rs. 1,06,55,550. In the said 2nd auction, Mr. G Subramaniyan was declared the successful bidder for an amount of Rs.1,10,55,550 which was Rs.45 lakh lower than the amount bid by Mr. G Subramaniyan, in the first auction held on 23.09.2020.
- 2.3 The AA in its order dated 02.06.2022, also made adverse observations against Mr. Ramasamy Shanmuggam and remarked, *inter alia*, that,

“The entire episode smacks of wrongdoings and malafide on the conduct of the Liquidator in conducting the two auctions on 23.09.2020 and 25.09.2020.”
- 2.4 It was evident that Mr. Ramasamy Shanmuggam conducted a fresh e-auction without publishing any notice for the same, thereby failing in his responsibility to explore as many potential bidders as possible for maximising the value for the stakeholders.
- 2.5 Regulation 33 (1) of the IBBI (Liquidation Process) Regulations, 2016 (Liquidation Regulations) provides that the liquidator shall ordinarily sell the assets of the CD through an auction in the manner specified in Schedule I. It was further noted that Clause 1(5) under Schedule I (Mode of Sale) of the Liquidation Regulations provides that the liquidator shall make a public announcement of an auction in the manner specified in Regulation 12(3). Clause 14 of the Code of Conduct for Insolvency Professionals under First Schedule to IBBI (Insolvency Professionals) Regulations, 2016 (Code of conduct) also requires that the IP must not act with *malafide* or be negligent while performing his functions and duties under the Code.

2.6 Accordingly, the Board was of the *prima facie* view that, by conducting fresh auction without issuing fresh auction notice, Mr. Ramasamy Shanmuggam contravened Section 208 (2)(a) of the Code, Regulation 33 of Liquidation Regulations read with clause 1(5) of Schedule I on Mode of Sale, Regulation 7(2)(h) of the IP Regulations and clauses 3, 5 and 14 of the Code of Conduct.

Submission by Mr. Ramasamy Shanmuggam

2.7 Mr. Ramasamy Shanmuggam submitted that before scheduling the auction sale dated 23.09.2020, the assets of the CD under liquidation were put to sale many times (11 times) and the process failed, especially the land and building for which a reserve price of Rs.1,06,55,550 was fixed after obtaining valuation report from approved valuers in consultation with the stakeholder applicant i.e. Indian Bank. Mr. Ramasamy Shanmuggam provided a list of failed auctions conducted by him as below:

Sr. No.	Date of auction	Asset in auction	Result
1.	09.09.2019	Plant and Machinery and Land and Building	Not sold
2.	16.10.2019	Plant and Machinery and Land and Building	Not sold
3.	18.11.2019	Plant and Machinery and Land and Building	Not sold
4.	12.12.2019	Plant and Machinery and Land and Building	Not sold
5.	10.01.2020	Plant and Machinery and Land and Building	Not sold
6.	10.02.2020	Plant and Machinery and Land and Building	Not sold
7.	16.03.2020	1. Plant and Machinery 2. Land and Building	Sold for Rs. 1,07,01,850 Not Sold
8.	15.04.2020	Land and Building	Not sold
9.	11.08.2020	Land and Building	Postponed to 21/08/2020 Not sold
10.	21.08.2020	Land and Building	Not sold
11.	09.09.2020	Land and Building	Not sold
12.	23.09.2020 cancelled and E-auction held on 25.09.2020	Land and Building	Sold for Rs.1,10,55,550

- 2.8 He further submitted that as per the terms and condition of the e-auction dated 23.09.2020 especially point 12, (rescheduling of which in essence had been impugned), provided -
"The liquidator has absolute right to accept or reject the bid or adjourn, postpone, extend the auction without assigning any reason". He submitted that rescheduling the auction was within his ambit of power and capacity available to him in the sale notice and there was no fault in rescheduling auction sale as soon the error in the process was reported to him.
- 2.9 Mr. Ramasamy Shanmuggam submitted that the reserve price of the lot under sale was fixed at Rs.1,06,55,550 with extensions in multiples of Rs 1,00,000 only. He submitted that when he was informed by the bidder of erroneous bidding for Rs.15,65,55,550 instead of Rs.1,56,55,550 which was many times more than the amount of enhanced bid, he realized that it was genuine error and accordingly within the power available in the e-auction notice, he rescheduled the auction.
- 2.10 He submitted that the contention of the applicant bank that in the rescheduled auction the reserve price would have been fixed at around Rs.1,55,55,550 only fortified his action that the bidding done of over 15 crore rupees was an error by the bidder and that the said bidding was rightly called off. He submitted that any auction sale is advertised with a reserve price and such reserve price (conveniently stated in the application as upset price) can only be changed by issuing a fresh e-auction notice and not otherwise.
- 2.11 He submitted that when the e-auction notice was not under challenge, the applicant bank could on no ground seek the quashing of the auction sale done upon the basis of the same which admittedly had fetched more than the reserve price. He further submitted that once an auction sale is cancelled by any reasons, in the rescheduled auction the earlier participants cannot be compelled by the liquidator to join as a must.
- 2.12 He further submitted that the duty of the liquidator is to liquidate the assets of the company under liquidation on a price equal or above the reserve price of the asset as set out with the consultation of the stakeholders within the applicable terms and conditions. He submitted that the liquidator cannot compel any bidder to increase any bid for any specified amount and the allegations of the complainant. are completely uncalled for being frivolous and vexatious and were liable to be dismissed. He submitted that he had immediately taken a legal opinion on the actions taken by him in rescheduling the auction and no error was identified in his actions.
- 2.13 He submitted that there was no *mala fide* on the part of the liquidator in rescheduling the auction on 25.09.2020. He submitted that the bank had consented for such rescheduling in the backdrop that the auction failed 11 times for the sale of the said assets. He further submitted that no guidance in law was available to fix an option on a higher reserve price just because an auction was rescheduled due to the intimation of the highest bidder about mistake in bidding and refusing to pay the bid price of the highest bidding. He submitted that he had forfeited the earnest money of Rs.10,65,555 deposited by Mr. S. Ramalingam. He submitted that incidentally, in the fresh bidding process which was conducted with the consent of Bank, Mr. G. Subramaniam, the highest bidder of the auction dated 25.09.2020 and the second highest bidder of said auction dated 23.09.2020 did not bid beyond Rs.1,10,55,550 and law does not provide any mechanism to compel any person to increase his bid to any particular amount.

- 2.14 Mr. Ramasamy Shanmuggam submitted that the bank which was a stakeholder in the process, did not object to the bidding process and encouraged for the property being somehow sold in the 12th auction and they did not do anything before filing an application impugning the actions of liquidator on the 90th day of the auction sale by which time the entire auction money was received, sales certificate was issued and the property was also given in possession of the said person. He submitted that the application filed by the bank was not pursued by them for more than one year which showed that they were satisfied with the auction and happy with the sale, and that an application was filed only to insulate any contingency in the process which is now fixed on the head of the liquidator.
- 2.15 He submitted that there was no allegation by any party that he was involved in any malpractice in the process, and that the said rescheduling could not be said even an error of judgement as it was continued with the same parties who heartily participated in the process of auction sale on 23.09.2020.
- 2.16 He submitted that there was no notional loss of Rs. 45 lakh as alleged by the bank and taken on the show cause notice, as no money was received, and earnest money deposited by non-participant highest bidder was forfeited by him. He submitted that the auction dated 25.09.2020 was not a fresh e-auction but a continuation of / rescheduling of the auction dated 23.09.2020 and same was done only with sole purpose to maximise the value of the assets of CD. He submitted that earlier he had conducted 10 auctions for the same asset of the CD after duly publishing the auction notice, and as such he was of *bonafide* belief that publication to the 12th time may not have a better potential of attracting bidders beyond those who came and joined the process till 11th time.
- 2.17 He submitted that in the e-auction held on 23.09.2020, the highest bid of Rs.15,65,55,550 was mistakenly entered due to a typing error at the heat of the moment and the same has been informed on affidavit as well. Therefore, the auction was rescheduled under intimation to Indian bank and accordingly, the earnest money deposit was forfeited.
- 2.18 He submitted that the sale conducted by him had been done in the manner prescribed under Schedule I of Liquidation Regulation. He submitted that he had made the sale by public announcement and the rescheduling, not being a fresh auction, was done on the basis of the auction notice which had led to the rescheduling of the auction on 25.09.2020.
- 2.19 He submitted that the entire controversy in the matter had arisen only because in the auction rescheduled for 25.09.2020, the highest bidder of the auction 23.09.2020 did not participate and the second highest bidder of the auction dated 23.09.2020 did not bid for the properties to the extent he had bided on 23.09.2020.
- 2.20 He further submitted that the auction took place in second wave of Covid 19. He faced challenges but despite the same, he conducted an auction on 25.09.2020 and the property was sold above the reserve price.

- 2.21 He submitted that the property was sold above the reserve price through public auction and therefore, the interpretation of Section 35(1)(e) and (f) of the Code was wrongly done. He also submitted that the Regulation 31A of the IBBI (Liquidation process) Regulations 2016 was incorrectly applied.
- 2.22 He further submitted that had there been a similar type of competitive bidding on 25.09.2020, which was obviously beyond the control of the liquidator, there would have been no occasion for any controversy in the matter to get issued an adverse comment by the AA followed by the present SCN. He submitted that the genesis of the issue leading to the disciplinary case against the liquidator was not the rescheduling of the erroneous auction of 23.09.2020 to 25.09.2020, but it was actually on the issue as to why in the rescheduled auction 25.09.2020, the liquidator could not muster the identical competitiveness as happened in 23.09.2020.
- 2.23 It was further submitted that against the adverse observation of the AA dated 02.06.2022, an appeal has been preferred before the National Company Law Appellate Tribunal, Chennai Bench vide Company Appeal (AT) (CH) (Ins) No.413/2022.

Analysis and Findings

- 2.24 The DC notes that in the 11th auction held by Mr. Ramasamy Shanmuggam on 23.09.2020, the reserve price was kept at Rs.1,06,55,550. There were five bidders and after 52 rounds, the following was the position -:

Sr. No.	Name of the bidder	Final Bid amount
1.	S. Ramalingam	Rs. 15,65,55,550
2.	G. Subramanian	Rs. 1,55,55,550
3.	M. Abdullah	Rs. 1,54,55,550
4.	A. Srinivasan	Rs. 1,31,55,550
5.	Bhadrashree Steel and Power Ltd.	Rs. 1,20,55,550

- 2.25 On 24.09.2020, Mr. Ramasamy Shanmuggam received communication from the successful bidder Mr. S Ramalingam that while submitting bid on 23.09.2020, he wanted to place bid for Rs.1,56,55,550 but due to tension and time pressure, he inadvertently punched Rs.15,65,55,550, and hence requested for cancellation of auction. Mr. Ramasamy Shanmuggam submitted that he had forfeited the earnest money of Rs.10,65,555 deposited by Mr. S. Ramalingam
- 2.26 The DC notes that without issuing a fresh sale notice, Mr. Ramasamy Shanmuggam rescheduled the e-auction to 25.09.2020 with same reserve price i.e., Rs. 1,06,55,550 with the same set of bidders. It is noted that Mr. S Ramalingam was allowed to participate in the auction held on 25.09.2020 without submitting a fresh EMD, and forfeited EMD was constituted a basis for participation in the auctions. Further, in the said rescheduled e-auction, Mr. G. Subramanian was declared as successful bidder for Rs.1,10,55,550 which was Rs.45 lakh lower than his previous bid in the auction held on 23.09.2020, just two days before the auction held on 25.09.2020.

- 2.27 The DC notes that on 24.09.2020, Mr. Ramasamy Shanmuggam had sent an email to the financial creditor Indian Bank stating that *“The e-auction held on 23-09-2020 was cancelled and the same will be done in due course of time.”* Despite this communication, just within one day of this email communication to the financial creditor, on 25.09.2020, Mr. Ramasamy Shanmuggam went ahead with re-initiating the auction with the same participants with no intimation to the financial creditor. This clearly demonstrates undue haste on part of the liquidator. As auction process was cancelled, as informed by Mr. Ramasamy Shanmuggam to the financial creditor, he should have conducted fresh auction and fresh auction notice should have been published, with due information to the financial creditor.
- 2.28 The DC notes that in the rescheduled e-auction held on 25.09.2020, Mr. Ramalingam, who only two days before wanted to bid for Rs. 1,56,55,550, submitted bid for Rs.1,07,55,550 only, and Mr. G Subramanian, who had submitted bid for Rs.1,55,55,550 on 23.09.2020, submitted bid for Rs.1,10,55,550, and became successful bidder. Within a span of two days, Mr. G Subramanian became the successful bidder, by reducing his bid amount by Rs.45,00,000. This action does not align with the objective of the Code and speaks volumes about the approach adopted in the so-called rescheduled auction on 25.09.2020.
- 2.29 The DC further notes that the sub-regulation (1) and (10) of Regulation 31A of IBBI (Liquidation Process) Regulations, 2016, requires a liquidator to take advice of stakeholders consultation committee in respect of sale under Regulation 32 and such advice shall not be binding on the liquidator: Provided that where the liquidator takes a decision different from the advice given by the stakeholders consultation committee, he shall record the reasons for the same in writing. However, in the instant matter, the liquidator had neither taken the advice of the stakeholders consultation committee, nor recorded any reason for not doing so. Further, his act of cancellation of auction dated 23.09.2020 and conducting auction on a very short notice on 25.09.2020 that too through limited participation of the eligible bidders of cancelled auction dated 23.09.2020, resulted in loss to the liquidation estate/stakeholders.
- 2.30 The AA vide its order dated 02.06.2022 cancelled the rescheduled auction held on 25.09.2020. and observed that *“In place of maximization of value, the auction held on 25.09.2020 decreased the value for the financial creditor. To top it all, the Liquidator never kept the financial creditor in loop for the proceedings held on 25.09.2020.”*
- 2.31 The DC also notes that the appeal filed by Mr. Ramasamy Shanmuggam , before the National Company Law Appellate Tribunal, Chennai Bench, against the observation of the AA dated 02.06.2022, has been dismissed vide order dated 20.11.2024.
- 2.32 In view of the forgoing discussion, the DC finds that Mr. Ramasamy Shanmuggam conducted the entire auction process in a non-transparent manner, without informing the financial creditors and without issuing fresh e-auction notice. It may be noted that the liquidator holds the liquidation estate in the fiduciary capacity for the benefit of all the stakeholders and action of the liquidator should be fair and transparent in the whole process.
- 2.33 In view of the above, the DC finds that the liquidator has conducted the above auctions in an unfair and improper manner which made the auction process questionable and resulted in

auction getting set aside by the AA. Hence, the DC finds Mr. Ramasamy Shanmuggam to have contravened Section 208 (2)(a) of the Code, Regulation 33 of Liquidation Regulations read with clause 1(5) of Schedule I on Mode of Sale, Regulation 7(2)(h) of the IP Regulations and clauses 3, 5 and 14 of the Code of Conduct.

3. Order

- 3.1 In view of the forgoing discussion, the DC finds that the liquidator has conducted the above auctions in a hasty and improper manner causing significant loss to the stakeholders. No fresh auction notice was issued after the cancelled auction. The same set of bidders for cancelled auction were the participants in the rescheduled auction. On the basis of the forfeited EMD, the bidder was allowed to participate and bid. The financial creditor was not informed about the rescheduled auction. Most importantly, within a span of two days, the value of the assets got reduced by an amount of Rs.45,00,000. Mr. Ramasamy Shanmuggam had conducted the auction in non-transparent manner which made the auction getting set aside by the AA. Hence, the DC holds the contraventions alleged in the SCN.
- 3.2 The DC, in exercise of the powers conferred under Section 220(2) of the Code read with Regulation 13 of the IBBI (Inspection and Investigation) Regulations, 2017 hereby suspends the registration of Mr. Ramasamy Shanmuggam for a period of two years.
- 3.3 This order will be effective from 15.06.2023, i.e., the date when the DC order No. IBBI/DC/168/2023 dated 16.05.2023 had come into force, prior to the same getting set aside by the order dated 10.04.2024 of the Hon'ble High Court of Delhi.
- 3.4 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Ramasamy Shanmuggam is providing his services under the Code, if any.
- 3.5 A copy of this order shall be forwarded to the ICAI Institute of Insolvency Professionals where Mr. Ramasamy Shanmuggam 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.
- 3.7 Accordingly, the show cause notice is disposed of.

Sd/-

(Jayanti Prasad)

Whole Time Member, IBBI

Dated: 11.12.2024

Place: New Delhi