

# INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

## (Disciplinary Committee)

No. IBBI/DC/226/2024

08 July 2024

### ORDER

This Order disposes of the Show Cause Notice (SCN) No. COMP-11012/123/2023-IBBI/775/883 dated 08.08.2023, issued to Mr. Radhakrishnan Dharmarajan, (hereinafter referred as “**Mr. Dharmarajan / IP**”) who is a member of the Indian Institute of Insolvency Professionals of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-001/IP-P00508/2017-2018/10909.

#### 1. Background

- 1.1 The Hon’ble National Company Law Tribunal, Chennai Bench (AA) vide its Order dated 05.05.2020, admitted the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“Code”) for Corporate Insolvency Resolution Process (“CIRP”) of Appu Hotels Limited (“Corporate Debtor / CD”) and appointed Mr. Mukesh Kumar Gupta as the Interim Resolution Professional (“IRP”). Later, Mr. Dharmarajan was appointed as the Resolution Professional (“RP”).
- 1.2 The IBBI in exercise of its powers under Section 218 of the 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 matter of CIRP of the CD. Thereafter, the IA served a notice under regulation 8(1) of the Inspection and Investigation Regulations to Mr. Dharmarajan on 29.07.2022. Mr. Dharmarajan replied to the investigation notice vide mail dated 05.08.2022. The IA submitted the investigation report to IBBI on 12.07.2023.
- 1.3 Therefore, based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the IBBI formed a *prima facie* view and issued the SCN to Mr. Dharmarajan on 08.08.2023 alleging that Mr. Dharmarajan 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). The reply of the IP on the SCN was received by the Board on 17.08.2023 and further submissions on 06.09.2023.

- 1.4 The SCN, response of the IP to the SCN and other materials available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. The IP availed an opportunity of personal hearing before the DC on 26.04.2024 wherein he appeared with Advocate Ms. Mamta Binani.

## **2. Alleged Contraventions, Submissions of IP and Findings**

The contraventions alleged in the SCN, submissions by the IP and findings of the DC are summarized as follows:

### **2.1 Submission of revised resolution plan before AA without approval of Committee of Creditors (CoC):**

#### **Contravention alleged in SCN**

- 2.1.1 It was observed that the Committee of Creditors (CoC) while conditionally approving the resolution plan submitted by M.K. Rajagopalan ('SRA') in its 9<sup>th</sup> meeting, required Mr. Dharmarajan to send back the Resolution Plan to the SRA for further revision. The relevant extract of the said CoC minutes is as under:

*"The revised Resolution Plan was approved with 87.39% of total voting share of Financial Creditors present and voted in the meeting. Since there was dissent by some of the financial creditors, the Resolution Professional will send back the Resolution Plan to the Resolution Applicant for further revision, as Section 30 (2) of IBC 2016, provides that the amount paid to dissenting financial creditors shall not be less than the amount paid to such creditors in accordance with Section 53 in the event of liquidation of the Corporate Debtor."*

- 2.1.2 It was further observed that the SRA submitted the revised resolution plan to Mr. Dharmarajan on 25.01.2021 and the said revised resolution plan was submitted before AA directly without first placing the same before CoC for its approval. AA approved the resolution plan vide order dated 15.07.2021. The approval of Resolution Plan was challenged before the Hon'ble National Company Law Appellate Tribunal (NCLAT) on various grounds by the Promoter and erstwhile Director of the CD. NCLAT vide its order dated 17.02.2022 passed the following direction:

*"The Resolution Professional made an incorrect statement that the revised Resolution Plan was approved at the 9th COC meeting. The revised Resolution Plan was not approved on January 22, 2021. After January 22, 2021, based on the CoC Resolution Dt.22.1.2021, the Resolution Plan was further modified, and the final Revised Resolution Plan dated 25 January*

*2021 was never laid before the CoC for approval. Thus, the approval of the Resolution Plan by the Adjudicating Authority cannot be treated as valid under Sec. 31(1) of the I & B Code, 2016.”*

- 2.1.3 Meanwhile, the above observations of NCLAT were challenged before Hon’ble Supreme Court. Hon’ble Supreme Court vide its order dated 03.05.2023 concurred with the observation of Hon’ble NCLAT and held that if a modified resolution plan, carrying however minor modification/ revision, is not finally approved by the CoC, then presentation of such modified plan before the AA for approval is an incurable material irregularity. No modified resolution plan can be placed directly before the AA, without being finally approved by the CoC. The Hon’ble Supreme Court emphasized that the requirement of placing the final resolution plan before the CoC under the CIRP Regulations has to be sincerely complied with and made following observation:

*“We would hasten to observe that the requirement of CIRP Regulations, particularly of placing the resolution plan in its final form before the CoC, has to be scrupulously complied with. No alteration or modification in the process could be countenanced. We say so for the specific reason concerning law that if the process as adopted in the present matter is approved, the very scheme of the Code and CIRP regulations would be left open-ended and would be capable of inviting arbitrariness at any level.”*

- 2.1.4 Further, on the issue of conditional approval granted by CoC in its 9th meeting, Hon’ble Supreme Court held that the same cannot be treated as final approval. The relevant extract of Hon’ble Supreme Court’s observation in this regard is as under:

*“This, in our view, is not the true operation of the scheme of the process of corporate insolvency resolution nor could the commercial wisdom of CoC be a matter of assumption. Looking to the nature and form of decision taken by the CoC in its ninth meeting, such a conditional approval could not have been treated as a final approval. Whereafter, whatever be the revision, the plan was only to be presented to CoC and could have been presented to the Adjudicating Authority only after final approval of CoC by the requisite majority. In other words, when the modified resolution plan, even if carrying minor modification/revision was not finally approved by CoC, its presentation to the Adjudicating Authority amounts to a material irregularity and this defect cannot be cured.”*

- 2.1.5 Section 30(6) of the Code provides that, the resolution professional shall submit the resolution plan as approved by the CoC to the AA. It was noted in this matter that after the SRA carried

out the suggested revision in the resolution plan, the revised resolution plan was not placed before the CoC and the same was submitted directly before AA for its approval in contravention to Section 30(6) of the Code.

- 2.1.6 Therefore, the Board was of the *prima facie* view that Mr. Dharmarajan has contravened sections 30(3), 30(6), and 208(2)(a) & (e) of the Code, regulation 39(2) of the CIRP Regulations, regulation 7(2)(a) & (h) read with Clauses 12 and 14 of the Code of Conduct of the IP Regulations.

#### **Submissions by the IP**

- 2.1.7 Mr. Dharmarajan submitted that no re-voting was contemplated, which is evident in the minutes of the CoC meeting. The plan was to be revised by the Resolution Applicant only for the limited purpose of distribution to the dissenting creditor as per section 30(2) of the Code. By virtue of the re-allocation, no prejudice was caused to any of the stakeholders.

- 2.1.8 Mr. Dharmarajan referred to para 48 of the judgment of the Hon'ble Supreme Court which reads as under:

*“However, this approval came with a significant condition that in view of the dissent by some of the financial creditors, the plan would be sent back to the creditors for further revision so as to make it compliant with section 30(2) of the Code which provides that the amount paid to such creditors in accordance with section 53 of the Code in the event of the liquidation of the corporate debtor. On 25.01.2021, the appellant-resolution applicant submitted the revised resolution plan incorporating the changes...”*

- 2.1.9 Mr. Dharmarajan admitted that the Hon'ble Supreme Court did not accept his submission that the resolution applicant was only required to provide re-distribution to ensure that dissenting financial creditors were given their share. Mr. Dharmarajan submitted that he had brought to the notice of the members of the CoC immediately after the 9<sup>th</sup> meeting (through email dated 25.01.2021) and before the filing of the application before the AA that the resolution applicant submitted the revised resolution plan and that the same will be placed before the AA.

- 2.1.10 Mr. Dharmarajan further submitted that the resolution applicant had also given an undertaking that there will not be any reduction of amount payable to the assenting financial creditors and that the dissenting financial creditors will get as per section 53 of the Code. In effect, there would not have been any occasion for the CoC to revote. Mr. Dharmarajan asserted that the

intent of the CoC in obtaining this undertaking is to ensure that their share in the resolution plan is not altered or reduced post voting and that is specifically with the intent of not voting again on the plan. If there is an alteration to their share and the plan was again to be sent to re-vote, the CoC would not have insisted for this undertaking.

2.1.11 Mr. Dharmarajan submitted that the undertaking given by the resolution applicant and the email by him prior to the revised resolution plan was to be submitted to the AA, were not brought to the notice of both NCLAT as well as the Hon'ble Supreme Court due to inadvertence and error of judgment.

2.1.12 Mr. Dharmarajan submitted that Hon'ble Supreme Court has neither approved nor given its views on the observations of NCLAT with respect to the allegation on him of making an incorrect statement that the revised resolution plan was approved at the 9<sup>th</sup> CoC meeting. Accordingly, Mr. Dharmarajan has pleaded that Hon'ble Supreme Court was conscious as to which paragraph it is approving and therefore, in as much as the Hon'ble Supreme Court has not made any observation with respect allegedly making incorrect statement before the COC cannot be held against him.

2.1.13 Mr. Dharmarajan further submitted that at the time of receipt of Expression of Interest (EoI) he was not in charge of the CD and the whole process of scrutiny of EoI was done by interim resolution professional – Mr. Mukesh Kumar Gupta and the EoI submitted by the Trust was rejected in view of the fact that a Trust is not eligible to submit a resolution plan.

#### **Analysis and Findings of the DC**

2.1.14 Section 30(6) of the Code provides as follows:

***“30. Submission of resolution plan. –***

*(1)....*

*.....*

*(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority”*

2.1.15 The issue in the instant matter for consideration of this DC is whether there was misconduct on part of Mr. Dharmarajan in not putting the revised resolution plan for approval of the CoC, before finally submitting it to the AA. Mr. Dharmarajan has pleaded that the approval was

granted by the CoC in its 9<sup>th</sup> meeting held on 22.01.2021 and only modification with respect to the payment to be made to dissenting financial creditors, as directed by the CoC in the said meeting, was made, therefore, no re-voting for separate approval was required to be taken. Also, Mr. Dharmarajan submitted before the DC the copy of the email communication dated 25.01.2021 wherein he had informed the members of the CoC that the resolution applicant has submitted the revised resolution plan and the same will be placed before the AA.

2.1.16 The DC observes that the Ld. NCLAT and Hon'ble Supreme Court in their respective orders have in detail examined the statutory requirement of placing the revised resolution plan for approval of CoC and have already rejected the above-mentioned pleas of Mr. Dharmarajan. The relevant paras from the respective Orders have already been quoted in the SCN and also mentioned in paras 2.1.2 to 2.1.4 above. Both these legal forums have concluded that when the modified resolution plan, even if carrying minor modification/revision was not finally approved by CoC, its presentation to the Adjudicating Authority amounts to a material irregularity and this defect cannot be cured. Further, there cannot be any concept of *post facto* approval of any resolution plan by CoC which had not been placed before it prior to the filing before the Adjudicating Authority.

2.1.17 Accordingly on perusal of the materials made available to DC, and specifically in terms of the Hon'ble Supreme Court Order dated 03.05.2023, this DC notes that Mr. Dharmarajan made a substantive procedural violation in not getting approval of the CoC before placing the revised/modified resolution plan to the AA.

2.1.18 It is pertinent to quote the following decision of the CoC in its 9<sup>th</sup> meeting with respect to the agenda of discussion and approval of resolution plan submitted by Mr. M.K. Rajagopalan –

*“The revised Resolution Plan was approved with 87.39% of total voting share of Financial Creditors present and voted in the meeting. Since there was dissent by some of the financial creditors, the Resolution Professional will send back the Resolution Plan to the Resolution Applicant for further revision, as Section 30(2) of IBC 2016, provides that the amount paid to such creditors in accordance with section 53 in the event of liquidation of the Corporate Debtor.*

*Representative from bank of India Tokyo emphasized that they have voted in favour considering the fact they will be getting their full amount. Resolution Professional assured them and other CoC members who have voted in favour of the Resolution Plan that there will not be any changes in the amount provided for assenting financial creditors. RP further apprised that the*

*RA has given an undertaking that RA will comply with Section 30(2) of IBC and there will not be any changes in the amount provided for assenting financial creditors. RP further apprised that the RA has given an undertaking that RA will comply with Section 30(2) of IBC and there will not be any change in the amount provided in the Resolution Plan for assenting creditors.”*

2.1.19 The DC notes that the CoC had nowhere approved that the revised resolution plan be submitted directly to the AA by the IP, post modification by the SRA without the approval of CoC. In such a situation, it was incumbent on Mr. Dharmarajan to obtain approval of the CoC on the revised resolution plan, before submission of the same to the AA for its approval.

2.1.20 The DC acknowledges the submission of Mr. Dharmarajan that he had informed the members of CoC vide email dated 25.01.2021 regarding the revision of resolution plan and his intention to submit it for approval of AA. Further, after the application for approval of resolution plan was filed with AA on 04.02.2021, he had informed the same to CoC in its meeting on 15.06.2021. The DC notes that although there may not be any *malafide* on the part of Mr. Dharmarajan, such omission by Mr. Dharmarajan, being a resolution professional, shows lack of understanding of the role the CoC plays being the authority approving the final modified plan. If there was any intention on the part of the CoC that such modified plan need not be put before it again, the same does not stand reflected in the minutes of 9<sup>th</sup> CoC meeting approving the pre-revised plan.. The importance and primacy of CoC in approval of resolution plan is utmost and therefore the same should not be handled in a casual manner. Mr. Dharmarajan was required to be more diligent and cautious in performance of his duties under the Code.

2.1.21 Accordingly, the DC is of the view that the conduct of Mr. Dharmarajan has led to violation of sections 30(3), 30(6), and 208(2)(a) & (e) of the Code, regulation 39(2) of the CIRP Regulations, regulation 7(2)(a) & (h) read with Clauses 12 and 14 of the Code of Conduct of the IP Regulations.

## **2.2 Issue related to Resolution Plan submitted by M.K. Rajagopalan**

2.2.1 It was observed that two Expressions of Interest (EOIs) were submitted by SRA Mr. M. K. Rajagopalan, one in individual capacity and another as managing director of Sri Balaji Vidyapeeth (Trust) wherein Mr. M.K. Rajagopalan is a founder and managing trustee. Pursuant to scrutiny of EOIs received, the EoI submitted by Balaji Vidyapeeth was declared ineligible since a charitable trust cannot run a profit-making entity. However, the plan submitted by Mr. M. K. Rajagopalan in its individual capacity has been declared eligible despite being managing

director of the same trust. It was also observed that Mr. Dharmarajan had failed to carry out the required due diligence in ascertaining the eligibility of Mr. Rajagopalan in terms of Section 88 of the Indian Trust Act, 1882 and Section 166(4) of the Companies Act.

- 2.2.2 It was observed by the NCLAT that the filing of two EOIs by the SRA, one for himself and another one on behalf of the ineligible trust has a material bearing on the competence of the resolution plan of the appellant, for being directly hit by Section 88 of the Trusts Act. Section 88 of the Indian Trusts Act, 1882 provides as under:

**88. Advantage gained by fiduciary** - *Where a trustee, executor, partner, agent, director of a company, legal advisor, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.*

- 2.2.3 Further, NCLAT also held that the SRA, Mr. M.K. Rajagopalan, being the Managing Trustee of the said trust, cannot be permitted to implement the resolution plan to gain financial advantage for himself. It was further observed that Hon'ble SC while upholding the order passed by NCLAT observed that-

*"44.3.1. It is thus obvious that the appellant-resolution applicant admitted his status as founder and managing trustee of said Sri Balaji Vidyapeeth and then, boldly claimed that the entities under his leadership were growing rapidly while ensuring quality of service to nation and public at large. In view of the claim made by the resolution applicant himself, coupled with the fact that in CIRP in question, two resolution plans were submitted by this appellant, one in individual capacity and another as managing director of the said trust, it is difficult to detach him from the said resolution applicant-Sri Balaji Vidyapeeth..."*

*44.5 Appellate Tribunal has rightly held the resolution plan being in contravention of the provisions of law for the time being in force. Observations and findings of the Appellate Tribunal in paragraphs 106 to 112 of the impugned order dated 17.02.2022 deserve to be and are approved."*

- 2.2.4 It was also noted that SRA Mr. M. K. Rajagopalan was also a Managing Director of another company, MGM Healthcare Private Limited which is said to be a super specialty hospital.



Further, as per the resolution plan, the Resolution Applicant had proposed to convert the Coimbatore property of the CD into a hospital. Noting this, Hon'ble SC in its order has observed that *“Given the status of the resolution applicant as Managing Director of MGM Healthcare Private Limited, his dealing with property of the corporate debtor and converting the same into a hospital cannot be said to be having no impact on the activities of the said MGM Healthcare Private Limited. A direct conflict of interest being writ large on the face of the record, it cannot be said that the prohibition in terms of Section 166(4) does not operate and the resolution plan does not stand in contravention of any of the provisions of law for the time being in force.”*

- 2.2.5 The SCN notes that section 166(4) of the Companies Act, 2013 provides that a director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company. It was thus, observed that both Hon'ble NCLAT and Hon'ble Supreme Court observed that the resolution plan of Mr. M. K. Rajagopalan was contravening the provisions of Section 88 of the Indian Trusts Act, 1882 as well as Section 166(4) of the Companies Act 2013.
- 2.2.6 Further, Section 30(2)(e) of the Code provides that the resolution professional shall examine each resolution plan received by him to confirm that each resolution plan does not contravene any of the provisions of the law for the time being in force.
- 2.2.7 Therefore, the IBBI formed a *prim facie* opinion in the SCN that conduct of Mr. Dharmarajan was in contravention of sections 30(2)(e), 208(2)(a) and (e) of the Code, and Regulation 7(2)(a) and(h) of IP regulations, read with clause 14 of the Code of Conduct.

#### **Submissions by the IP**

- 2.2.8 Mr. Dharmarajan submitted that although the NCLAT and Hon'ble Supreme Court had gone on the premise that two resolution plans were submitted by Shri M. K. Rajagopalan, one in his individual capacity and another as Managing Trustee of the said Trust, the same is factually incorrect. It is the admitted fact that separate EOIs were given by Shri M. K. Rajagopalan as an individual as well as by the Trust “Sri Balaji Vidyapeeth” of which Shri M.K. Rajagopalan is the Managing Trustee. However, on scrutiny by the then IRP Mr. Mukesh Kumar Gupta, the EOI submitted by the Trust was disqualified on the ground that the said entity was a charitable Trust. Since the trust was disqualified in the EOI stage itself, RFRP was not issued to it and no resolution plan was given by the Trust. Thus, the IRP had received only one Resolution plan

from Mr M. K. Rajagopalan (RA) which was submitted in his individual capacity. Two resolution plans were not received under different hats as pronounced in the SC order.

2.2.9 Mr. Dharmarajan submitted that at the time of receipt of EOI, he was not in charge of the Corporate Debtor and the whole process of scrutiny of EOI was done by Mr. Mukesh Kumar Gupta, the then IRP and, the EOI submitted by the Trust was rejected in view of the fact that a Trust is not eligible to submit Resolution Plan.

2.2.10 Mr. Dharmarajan submitted that when the Resolution Applicant (RA) submitted his EOI, it was the IRP who had conducted the Section 29A compliance based on due diligence and available information in public domain and cleared the RA as eligible to submit the Resolution plan and the Resolution plan of this particular RA was received by the IRP, even before Mr. Dharmarajan took over as RP and that he had also conducted the necessary due diligence, including public domain search, third party reports if any, as well as scrutiny of defaulters list at MCA/ROC to ensure that the RA is not barred to act as Director under the companies act as part of my compliance check for 29A and also relied on the signed affidavits and declarations submitted by the RA.

2.2.11 Mr. Dharmarajan further submitted that the Hon'ble Supreme Court while deciding the issue, the ineligibility of the RA under Section 88 of the Indian Trust Act, while upholding the judgment of NCLAT in paragraph has held as under: -

*“ the given set of facts and circumstances of this case, in our views, the Appellate Tribunal has rightly held the resolution plan being in contravention of the provisions of law for the time being in force. Observations and findings of the Appellate Tribunal in paragraphs 106 to 112 of the impugned order dated 17.02.2022 deserve to be and are approved.”*

2.2.12 Mr. Dharmarajan replied to the observation of him not exercising caution to the violation of section 166(4) of the Companies Act, 2013 by submitting that it is not possible for any insolvency professional to go beyond the documents and data available on the public domain, search, verification of documents, apart from the affidavit and declarations provided by the RA and a reasonable view of any negative or default list maintained by MCA or any other agencies and also the available third party sources. He further submitted before the DC that this issue of ineligibility of SRA was raised first time before the NCLAT and therefore the same was not considered either by the CoC or the AA, while approving the resolution plan.

2.2.13 Mr. Dharmarajan further submitted that the issue of conflict is not raised by any of the Directors of MGM Health care Private Limited, where Mr. MK Rajagopalan is a director and the other directors being his son, daughter and wife and there are no issues of conflict raised by any of these or any other person. He further submitted that, for an IP to conduct reasonable evaluation under Section 29A and any other laws in force, it would be a herculean task to find out if there can be a potential conflict, unless specifically raised. Further, the eligibility of Mr MK Rajagopalan was verified by the erstwhile IRP. Mr Mukesh Kumar.

#### **Analysis and Findings of the DC**

2.2.14 Section 30(2)(e) of the Code entrusts duty on the resolution professional to examine a resolution plan that it does not contravene any provisions of law. The relevant portion of the provision is as hereunder:

#### ***30. Submission of resolution plan. –***

*(1).....*

*(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –*

*(a).....*

*.....*

*(e) does not contravene any of the provisions of the law for the time being in force*

*.... ”*

2.2.15 In the instant matter, the issue for consideration of DC is whether Mr. Dharmarajan, acting as resolution professional failed in his duty to examine the resolution plan submitted by Mr. M.K. Rajagopalan on touchstone of section 88 of the Indian Trusts Act, 1882 and also section 166(4) of the Companies Act, 2013.

2.2.16 The DC notes that Ld. NCLAT and Hon’ble Supreme Court in their respective orders have already examined in detail and concluded that the resolution plan submitted by Mr. M.K. Rajagopalan was in violation of section 88 of the Indian Trusts Act, 1882 and also section 166(4) of the Companies Act, 2013. Accordingly, in terms of section 30(3) read with section 30(2)(e) of the Code, such resolution plan cannot be presented before the CoC for approval.

2.2.17 The DC acknowledges the submission of Mr. Dharmarajan that the issue regarding ineligibility of SRA was raised for the first time before NCLAT only. On perusal of the NCLT order dated 15.07.2021 whereby the resolution plan of SRA for the CD was approved, from paras 23 to 72, where various objections to resolution plan was examined, the DC observes that this issue of ineligibility of SRA was not raised by any intervenors (erstwhile promoter being one of the intervenor) and therefore was not examined. Further, on perusal of the NCLAT Order dated 17.02.2022, the DC observes that Mr. Dharmarajan had submitted before the NCLAT that this issue of ineligibility of SRA is raised first time before the NCLAT. The relevant excerpt from NCLAT order is as follows:

*“72. It is further contended that Appellant's argument regarding conflict of interest of Respondent No. 2 and violation under Section 88 of Indian Trust Act, 1882 is denied. The aforesaid argument was never raised before the CoC and the Ld. Adjudicatory Authority....”.*

2.2.18 Further, Hon'ble Supreme Court in its Order dated 03.05.2023, while setting aside the resolution plan had also observed :

*30.6. It has also been submitted that the issue of ineligibility of the resolution applicant was not raised before NCLT but, NCLAT in its impugned order, has held him ineligible. In this regard, the RP could have only carried out public domain search and take into account the affidavit of compliance submitted by resolution applicant in view of Regulation 39 of the CIRP Regulations.*

xxx

*44.4. Although, the aspects aforesaid did not form the part of consideration of CoC but, they cannot be ignored merely with reference to the status assigned to the commercial wisdom of CoC. The principles underlying the decisions of this Court respecting the commercial wisdom of CoC cannot be over-expanded to brush aside a significant shortcoming in the decision making of CoC when it had not duly taken note of the operation of any provision of law for the time being in force.*

2.2.19 Therefore, in light of the above, and considering that these issues with respect to ineligibility of SRA came to the knowledge of Mr. Dharmarajan only after the approval of resolution plan by the AA, the DC is inclined to accept the submissions of Mr. Dharmarajan regarding the appropriateness of his due diligence in examining the eligibility of resolution applicant by

verification of the documents and data available on the public domain, negative or default list maintained by MCA or any other agencies and also the available third party sources, search, verification of documents, affidavit and declarations provided by the RA. If such inquiry would have caused him to suspect the eligibility, further examination by him or any third-party provider for checking the credentials of the SRA would have been required. However, the issues, raised before the NCLAT for the first time, regarding eligibility of SRA were very nuanced and could not have been examined by a resolution professional on the basis of a reasonable due diligence, unless brought out specifically before him. Accordingly, the contravention alleged in the SCN in this regard is not upheld.

### **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 IBBI (Inspection and Investigation) Regulations, 2017 and Regulation 11 of the IBBI (Insolvency Professionals) Regulations, 2016 hereby suspends the authorisation of assignment of Mr. Radhakrishnan Dharmarajan (Registration No. IBBI/IPA-001/IP-P00508/2017-2018/10909) for a period of three months and warns him to be extremely careful and diligent in performance of his duties under the Code.
- 3.2 A copy of this order shall be forwarded to the Institute of the Chartered Accountants of India ICAI where Mr. Radhakrishnan Dharmarajan is enrolled as a member.
- 3.3 A copy of this order shall be sent to the CoC and the Stakeholders' Consultation Committee (SCC) of all the Corporate Debtors in which Mr. Radhakrishnan Dharmarajan is providing his services, if any.
- 3.4 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.
- 3.5 Accordingly, the show cause notice is disposed of.

Sd/-

(Sandip Garg)

Whole Time Member, IBBI

Dated: 08 July 2024

Place: New Delhi