

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/231/2024

24 July 2024

ORDER

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2023/00842/803/1418 dated 12.08.2023, issued to Mr. Vijaykumar Subramaniam Varun, resident of Flat No. 1B 108, Banyan, The Tree by Provident, 2nd Main Road, Herohalli, off Magadi Road, Bangalore, Karnataka-560091, who is a Professional Member of the ICSI Institute of Insolvency Professionals and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI/Board) with Registration No. IBBI/IPA-002/IP-N00290/2017-2018/10848.

1. Background

- 1.1 The Hon'ble National Company Law Tribunal, Bengaluru Bench (AA) vide its Order dated 29.08.2019, admitted the application for Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code 2016 ("Code") of the Aradhya Steel Private Limited ("CD1") and appointed Mr. Vijaykumar Subramaniam Varun as IRP.
- 1.2 The Hon'ble National Company Law Tribunal, Bengaluru Bench (AA) vide its Order dated 12.02.2020, admitted the application for Corporate Insolvency Resolution Process (CIRP) under Section 10 of the Code, of the Aradhya Wire and Ropes Private Limited ("CD2") and appointed Mr. Vijaykumar Subramaniam Varun as IRP.
- 1.3 The Board in exercise of its powers under Section 218 of the Code, read with Regulation 7(2) and 7(3) of Insolvency and Bankruptcy Board of India (Inspection and Investigation), Regulations, 2017 ("Inspection and Investigation Regulations"), appointed an Investigating Authority (IA) to investigate the CIRP of the CD1 and CD2. The notice of investigation was served on 03.02.2023 to Mr. Varun. However, no reply was received by the IA from Mr. Vijaykumar Subramaniam Varun.
- 1.4 Based on the findings of the investigation as mentioned in the Investigation Report submitted by the IA, the IBBI issued the SCN to Mr. Vijaykumar Subramaniam Varun on 12.10.2023. The SCN alleged contraventions of several provisions of the Code, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 ("CIRP Regulations"), Inspection and Investigation Regulations and the IBBI (Insolvency Professionals) Regulations, 2016 ("IP Regulations").

1.5 The SCN and other materials available on record were referred to the Disciplinary Committee (DC) for disposal of the SCN. Mr. Vijaykumar Subramaniam Varun was provided an opportunity of personal hearing before the DC on 14.02.2024. However, he did not appear. Later *vide* email communication dated 22.02.2024, Mr. Vijaykumar Subramaniam Varun submitted that his health is in very bad condition which has prevented him in attending the hearing. He further submitted that he has been advised prolonged rest and has not been able to do any activities. The DC again gave another opportunity to Mr. Vijaykumar Subramaniam Varun for personal hearing on 18.04.2024. However, he again failed to appear before the DC. Even during the scheduled time of hearing, a mail communication was sent to Mr. Vijaykumar Subramaniam Varun to join the personal hearing. However, neither he joined the hearing nor he replied to that mail till date.

2. Alleged Contraventions against Mr. Varun

The contraventions alleged in the SCN and analysis of DC are summarized as follows:

2.1 Non-Cooperation to IA in Conducting Investigation:

2.1.1 It was observed that a notice of investigation was served to Mr. Vijaykumar Subramaniam Varun by the IA on 03.02.2023 and Mr. Vijaykumar Subramaniam Varun was required to respond to same. He replied *vide* mail dated 05.02.2023 that he was not well for quite sometime and therefore not sure if he can submit any reply. Further e-mails were sent to Mr. Vijaykumar Subramaniam Varun dated 28.04.2023, 03.05.2023 and 10.05.2023 to provide comments/response on the allegations raised by the complainant.

2.1.2 Regulation 8(4) and 8(8) of the Inspection and Investigation Regulations provides as under:

8. Conduct of Investigation.

(4) 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.

(8) It shall be the duty of the service provider and an associated person to give to the Investigating Authority all assistance which the Investigating Authority may reasonably require in connection with the investigation.

2.1.3 By not providing reply to the notice of investigation despite repeated requests by the IA, Mr. Vijaykumar Subramaniam Varun rendered complete non-cooperation to IA in the process of investigation.

2.1.4 In view of the above, the Board was of the *prima facie* view that Mr. Vijaykumar Subramaniam Varun has *inter- alia* violated Sections 208(2)(e) and 218(3) of the Code, Regulations 8(4) and 8(8) of the Inspection and Investigation Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clauses 18 and 19 of the Code of Conduct.

Analysis and Findings of DC

2.1.5 The DC finds the IA was constituted by the Board to investigate Mr. Vijaykumar Subramaniam Varun in the CIRP. The IA through the notice of investigation and further through follow-up mails sought certain documents and information from Mr. Vijaykumar Subramaniam Varun. However, the same was not provided to the IA by Mr. Vijaykumar Subramaniam Varun. The DC also notes that Mr. Vijaykumar Subramaniam Varun pleaded his ill health for not providing required documents and information to the IA.

2.1.6 The DC observes that Mr. Vijaykumar Subramaniam Varun has not even once sought any additional time to comply with the requirements of the IA. Therefore, the DC finds that Mr. Vijaykumar Subramaniam Varun has not even shown his effort for providing even the minimal documents and information to the IA. This approach of Mr. Vijaykumar Subramaniam Varun is also visible when his reply on the allegations mentioned in the SCN was sought. Further, no reply was received from him when an opportunity of personal hearing was granted to him. Such an approach of Mr. Vijaykumar Subramaniam Varun is an act of contempt towards the statutory authorities.

2.1.7 Therefore, this DC finds Mr. Vijaykumar Subramaniam Varun to be in contravention of Sections 208(2)(e) and 218(3) of the Code, Regulations 8(4) and 8(8) of the Inspection and Investigation Regulations and Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clauses 18 and 19 of the Code of Conduct.

2.2 Failure to form an opinion regarding PUF transactions of CD1 and CD2:

2.2.1 Regulation 35A of the CIRP Regulations provides as under:

35A. Preferential and other transactions.

(1) On or before the seventy-fifth day of the insolvency commencement date, the resolution professional shall form an opinion whether the corporate debtor has been

subjected to any transaction covered under Sections 43, 45, 50 or 66.

(2) Where the resolution professional is of the opinion that the corporate debtor has been subjected to any transactions covered under Sections 43, 45, 50 or 66, he shall make a determination on or before the one hundred and fifteenth day of the insolvency commencement date.

2.2.2 It was noted that Mr. Vijaykumar Subramaniam Varun failed to submit CIRP Form 8 which provides for details regarding forming opinion and determination on Preferential, Undervalued, Fraudulent and Extortionate (PUFE) transactions as required in terms of Regulation 40B(1A) of CIRP Regulations read with IBBI Circular 20.07.2021. Further, it was noted that he also failed to submit CIRP Form 6 under Regulation 40B of CIRP Regulations which *inter alia* provides for details regarding the filing of the application in respect of PUFE transaction. Failure to file CIRP Form 6 and 8 *prima facie* indicated that Mr. Vijaykumar Subramaniam Varun failed to form an opinion and determination of PUFE transactions in terms of Regulations 35A(1) and (2) of CIRP Regulations.

2.2.3 In view of the above, the Board was of the *prima facie* view that Mr. Vijaykumar Subramaniam Varun has contravened Sections 208 (2)(a), 208 (2)(e) of Code, Regulation 35A(1), 35A(2) and 40B of the CIRP Regulations, Regulation 7(2) (a) and Reg. 7(2)(h) of the IP Regulations read with Clause 13 and 14 of the Code of Conduct.

Analysis and Findings of DC

2.2.4 The DC notes that under the scheme of the Code, a resolution professional or liquidator, as the case may be, is entrusted with an important duty to ascertain whether any avoidable transaction has been entered into by the CD. Such transaction has to be reported to the AA for necessary directions including clawing back the money or asset involved in such transaction.

2.2.5 Regulation 40B(1B) of the CIRP Regulations mandates an Insolvency Professional to file Form CIRP 8 intimating details of his opinion and determination of any preferential transaction or transactions covered under Sections 43, 45, 50 and 66 of the Code under Regulation 35A of the CIRP Regulations.

2.2.6 However, the IA has observed that Mr. Vijaykumar Subramaniam Varun has not filed any such form and therefore the SCN alleges that he infact did not form any opinion regarding such transaction. This DC believes that it is mandatory on a resolution professional or

liquidator to file respective forms, even if he is of the opinion that no such transaction exists. Intimation to Board regarding his opinion, whether affirmative or negative, is necessary. Mr. Vijaykumar Subramaniam Varun has also not provided any document to prove the contrary.

2.2.7 Therefore, the DC is of the view that Mr. Vijaykumar Subramaniam Varun is in contravention of Sections 208 (2)(a), 208 (2)(e) of Code, Regulation 35A(1), 35A(2) and 40B of the CIRP Regulations, Regulation 7(2) (a) and Reg. 7(2)(h) of the IP Regulations read with Clause 13 and 14 of the Code of Conduct.

2.3 Non- filing/ Delay in filing of CIRP Forms:

2.3.1 As per Regulation 40B of the CIRP Regulations, an Insolvency Resolution Professional (IRP) or Resolution Professional (RP), as the case may be, is required to file the Forms, along with the enclosures thereto, on an electronic platform of the Board, as per the timelines stipulated against each Form.

2.3.2 It was noticed that Mr. Vijaykumar Subramaniam Varun had either not filed some of the CIRP Forms or filed some with delays. A CD-wise list of non-compliance is provided below:

(1) Aradhaya Steel Private Limited

Form	Due Date	Date of Submission	Delay (in days)
CIRP Form 1	Not filed	Not filed	NA
CIRP Form 3	29.11.2019	19.12.2019	20
CIRP Form 6 (Extension of CIRP)	21.02.2020	03.03.2020	11
CIRP Form 6 (PUFE transactions)	Not filed	Not filed	NA
CIRP Form 8	Not filed	Not filed	NA

(2) Aradhya Wire and Ropes Private Limited

Form	Due Date	Date of Submission	Delay (in days)
CIRP Form 5	Not filed	Not filed	NA

2.3.3 In view of the above, the Board was of the *prima facie* view that he had *inter- alia* violated Section 208(2)(a) and 208(2)(e) of the Code, Regulation 40B of the CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with clause 13 and 14 of Code of Conduct and the circular issued by IBBI on 20.07.2021.

Analysis and Findings of DC

2.3.4 The DC notes that Regulation 40B of the CIRP Regulations mandates the resolution professional to file various forms with respect to CIRP of the CD. The intent behind such form filing is to intimate the Board regarding the ongoing process to assist the Board in performing its various statutory functions under the Code.

2.3.5 In the instant case, as the material available on record reflects, Mr. Vijaykumar Subramaniam Varun has failed to file necessary statutorily mandated forms. Further, no response has been received from Mr. Vijaykumar Subramaniam Varun for this lapse.

2.3.6 Therefore, this DC finds Mr. Vijaykumar Subramaniam Varun to be in violation of Section 208(2)(a) and 208(2)(e) of the Code, Regulation 40B of the CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with clause 13 and 14 of Code of Conduct and the circular issued by IBBI on 20.07.2021.

2.4 Non filing/ Delay in filing of relationship Disclosures:

2.4.1 IBBI circular dated 16 January 2018, regarding filing of relationship disclosures, provides that *an insolvency professional shall disclose his relationship, if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (Hi) Financial Creditor(s), (iv) Interim Finance Provider(s), and (v) Prospective Resolution Applicant(s) to the Insolvency Professional Agency of which he is a member, within the time specified under the circular.*

2.4.2 It was observed that Mr. Vijaykumar Subramaniam Varun did not file the relationship disclosure regarding his appointment as IRP in the matter of Aradhya Wire and Rope Private Limited. Further, in the matter of Aradhya Steel Private Limited, the non-filing/ delay in filing of relationship disclosures is as follows:

Details	Date of Appointment	Date of Submission	To be filed within	Delay
IRP	29.08.2019	24.09.2019	3 days from date of appointment IRP	23 days
RP	03.12.2019	Not filed	3 days from date of appointment of RP	NA

2.4.3 In view of the above, the Board was of the prima facie view that Mr. Vijaykumar Subramaniam Varun has *inter- alia* violated Section 208(2)(a) and 208(2)(e) of the Code,

Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with clause 13 and 14 of Code of Conduct and the circular issued by IBBI on 16.01.2018.

Analysis and Findings of DC

2.4.4 During the CIRP, the complete control of the CD is vested with the resolution professional and he is also entrusted with the duty to carry out the processes under the Code in a manner to achieve the objectives of the Code. Therefore, the transparency in the actions of resolution professional is quintessential to secure the trust of the stakeholders in the resolution professional as well as the process itself.

2.4.5 The relationship and cost disclosure by the resolution professional is a step towards maintaining such transparency. However, the material available on records show that Mr. Vijaykumar Subramaniam Varun has failed in this duty.

2.4.6 Accordingly, this DC finds Mr. Vijaykumar Subramaniam Varun to be in violation of Sections 208(2)(a) and 208(2)(e) of the Code, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with clause 13 and 14 of Code of Conduct and the circular issued by IBBI on 16.01.2018.

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.

3.3. It is observed by the DC that Mr. Vijaykumar Subramaniam Varun has in earlier instance also, defied to cooperate with the Board in carrying out the inspection and investigation activity. Then also, Mr. Vijaykumar Subramaniam Varun had not provided any provided information. However, in that case, the DC *vide* its Order No. IBBI/DC/134/2022 dated 13.10.2022 took the view that since Mr. Vijaykumar Subramaniam Varun had already crossed the age of 70 years and cancelling registration of Mr. Vijaykumar Subramaniam Varun will not have any effect as after crossing the age of 70 years, Mr. Varun, anyway, is not entitled to get AFA renewed, disposed the SCN without any direction.

3.4. However, it must be noted that a resolution professional is the major driving force of the

CIRP and the information provided by the resolution professional allows the Board to carry out various crucial functions entrusted upon it under the Code. The Board needs all and accurate information of the CIRPs to carry out its statutorily mandated functions of promoting the development of and regulating the working of regulated entities and other institutions; formulating standards for functioning of regulated entities, monitoring the performance of regulated entities; collecting and maintaining the records relating to insolvency cases; promoting transparency and best practices in governance; conducting periodic study and research; etc.

- 3.5. This DC finds that effective and regular communication between an Insolvency Professional and the Board is necessary for smooth functioning of insolvency ecosystem. The information provided by the IP helps the Board to monitor the processes under the Code and take remedial steps whereon monitoring it finds that process is lacking. However, if the IP does not respond at all, monitoring of processes will not be possible and the whole insolvency ecosystem will suffer. Therefore, 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.
- 3.6. 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) imposes a penalty on Mr. Vijaykumar Subramaniam Varun, of amount equivalent to the fees received by him in the CIRP of Aradhya Steel Private Limited and Aradhya Wire and Ropes Private Limited, 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, and
 - b) cancels the registration of Mr. Vijaykumar Subramaniam Varun (Registration No. IBBI/IPA-002/IP-N00290/2017-2018/10848).
- 3.7. This Order shall come into force immediately in view of para 3.6 of the order.
- 3.8. A copy of this order shall be forwarded to the ICSI where Mr. Vijaykumar Subramaniam Varun is enrolled as a member.

3.9. 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.

3.10. 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
Insolvency and Bankruptcy Board of India

Dated: 24 July 2024

Place: New Delhi