

**Indian Institute of Insolvency Professionals of ICAI
(Disciplinary Committee)**

DC. No. - IIIPI/DC/40/2021-22

ORDER

In the matter of Mr. Krishnasamy Vasudevan (Respondent) under Clause 15(1) of the Disciplinary Policy of IIIPI read with Clause 24(1)(c) of IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, (2016).

- 1.0** This order disposes of the Show Cause Notice (SCN) dated 1st December 2021 issued to the respondent Mr. Krishnasamy Vasudevan, 17B/7B, Maruti Nagar Hasthinapuram Chromepet. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI, and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board) with Registration No IBBI/IPA-001/IP-P00155/2017-18/10324. The Disciplinary Committee of IIIPI (DC) issued SCN to respondent, based on the reference received from the Grievance Redressal Committee (GRC) pertaining to assignment handled by him as Resolution Professional (RP) in M/s Tiffins Barytes Asbestos and Paints Limited (Corporate Debtor). Respondent submitted his contention to the SCN vide letter dated 16/12/2021.
- 2.0** The allegation against the respondent was, that in the matter of M/s Tiffins Barytes Asbestos and Paints Limited, a group of partnership firm's viz. P&D Enterprises, D.P.Exports, D&D Enterprises, Elite Exports and BP Exports which are all owned by Mr. Poobalan along with his wife Mrs. Poongudi submitted their claims against the Corporate Debtor as Operational Creditors for their unpaid dues in Form 'B', which was admitted by the respondent in the capacity of Operational Creditors. However, post first CoC meeting, the above referred entities re-submitted their claims in "Form C" (form of submission of claims of financial creditors) which were later admitted by the respondent. The complainant has further asserted that the claims of these companies against the CD are fundamentally operational in nature and knowing fully well the respondent in connivance with Mr. Poobalan and Mr N.V. Suresh (CGM of CD) had deliberately admitted their claims as Financial Creditors and admitted them in CoC with intentions to defraud other creditors.
- 3.0** Respondent submitted that he has taken reasonable care and diligence while performing his duties as with regards to subject creditors, and their subsequent admission as "Financial Creditors". He further submitted that with regard to transactions which appears to have come under both the operational and financial debt, he sought an independent legal opinion and acted on professional opinion given by the legal counsel. In the present matter legal counsel opined that the transaction claimed by the creditors reflect payment of advance agreed to be repaid with interest and liquidated damages and therefore in commercial nature of borrowing and falls with the definition of Financial debt. Thus based on the legal opinion they were admitted under category of "financial creditor". He further submitted that after admission of them as Financial Creditor, the complainant had attended the CoC meetings and ratified the said act and none of the member of the CoC has made any objection in this regard.

He further submitted that application on the subject issue was also filed before Hon'ble NCLT for adjudication wherein court decided to reinstate the category of subject creditors without passing any adverse remarks against his conduct.
- 4.0** An Interim Resolution Professional (IRP)/RP is appointed by Adjudicating Authority and is duty-bound to conduct CIRP with fairness and diligence and must maintain absolute independence in discharge of his statutory duties without any external influences. Further, collation and verification of claims is primary and most important duty of a resolution professional. He is expected to take reasonable care and due

diligence while verifying the claims submitted by different categories of creditors. In the present matter DC observed that initially respondent admitted subject creditors as 'operational creditor' however, later guided by reasoning given by legal counsel and applying his prudence he decided to shift them to category of 'financial creditor'.

- 5.0** DC also took note of the fact that similar allegation was also raised by the complainant before the NCLT by way of a miscellaneous application No/573/2018 based on which the NCLT vide its order dated 27-03-2019, advised the respondent to delete the names of M/s D.P. Exports, M/s D&D Enterprises and M/s Elite Export from the list of COC with immediate effect. Accordingly, the respondent complied with the direction given by the NCLT. DC further notes that though the NCLT vide order dated 27-03-2019 advised the respondent to delete the name of the above said entities from the list of the CoC as financial creditors with immediate effect. However, no adverse comment or strictures are noted against the respondent in the said order.
- 6.0** The DC also noted the fact that there is no documentary evidence found on the records which can establish that the admission/acceptance of the claims of M/s D.P. Exports, M/s D&D Enterprises and M/s Elite Export, as financial creditors by the respondent was a deliberate act performed in connivance with Mr Poobalan and Mr N.V. Suresh. Thus, keeping in view all facts, DC decided to take a lenient view in the matter.
- 7.0** Accordingly, in exercise of the powers conferred under Regulation 24(1) (c) of the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 read with clause 15(1) of the Disciplinary Policy of IIPAI, DC hereby pronounces respondent as not guilty. However, DC advises the respondent to exercise due caution and be more careful while handling any assignments. Accordingly, the show cause notice is disposed of.
- 8.0** This order shall come into force from the date of its issue.
- 9.0** A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

Date: 28/03/2022

Place: Delhi

CERTIFIED TRUE COPY

Sd/-

Mr. Satish Marathe (Chairman)

CA. (Dr.) Debashis Mitra (Member)

Mr. Satpal Narang (Member)

CA. Rahul Madan (Member)

Copy to:

1. Insolvency and Bankruptcy Board of India.
2. Indian Institute of Insolvency Professionals of ICAI- Members Record.