

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

**DC. No. IIPI/DC/45/2021-22**

**ORDER**

**In the matter of Ms. Revathi Raghunathan (Respondent), under Clause 15(1) of the Disciplinary Policy of IIPI 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) No. IIPI/DC/45/2021-22 dated 17-12-2021 issued to **Ms. Revathi Raghunathan** (Respondent), Flat No 2, A Wing, 7<sup>th</sup> Floor, Parsn Manere, 442 Anna Salai, Chennai, Tamil Nadu- 600006. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI (IIPI) and registered with IBBI with Registration No –**IBBI/PA-001/IP-P00832/2017-18/11417**.

**2.0** The Disciplinary Committee of IIPI (DC) issued SCN to the respondent, based on the reference received from Monitoring Committee of IIPI including the findings in the inspection report of Inspection Authority (IA), pertaining to assignments handled by her as an IRP/RP in the CIRP of **(a) Gokula Kannan Chits Tamilnadu Private Limited; and (b) Gokula Kannan Benefit Fund Limited**. The SCN alleged the contravention of the provisions of section 12, 14(1)(b), 21(6A), 22(1), 24(3), 25 (1), 25 (2) (g), 29, 208 (2) (a) and (e) of the Insolvency and Bankruptcy Code, 2016, Regulation 4A, 6(2) (bb), 13(2) (e), 16A, 19, 20, 25(3), 27, 33(4), 34, 34A, 36(1), (4) and 39A of the Insolvency Resolution Process for Corporate Persons Regulation 2016, Regulation 7(2) (a), (h) and (i) of IBBI (Insolvency Professional) Regulation, 2016, read with clauses 1, 2, 3, 5, 10, 13, 14, 19 and 27 of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016, and Circular No. IP/005/2018 dated 16th January, 2018. The Respondent submitted her contentions to the SCN vide letter dated 06-01-2022.

**3.0** The DC referred the SCN, written/oral submissions of the respondent and other material available on record for disposal of the SCN in accordance with the Code and Regulations made thereunder. An opportunity for personal virtual hearing was provided to the respondent on 13-04-2022 however, due to some unforeseen circumstances respondent's matter was adjourned to 06-05-2022. Accordingly, on date respondent appeared before the DC, wherein the respondent reiterated the submissions made in the written reply and also made a few additional submissions.

**A. Gokula Kannan Chits Tamilnadu Private Limited.**

**4.0** In the CIRP of Gokula Kannan Chits Tamilnadu Private Limited, it is noted that respondent sold the encumbered assets i.e., Innova Crysta Car which is hypothecated with Karur Vysya Bank. However, as per the provisions of the Code assets cannot be sold until the CIRP is effective. As per section 25(1) of the Code it shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

**4.1.** Respondent in her reply submitted that the said asset was hypothecated with Karur Vysya Bank (KVB), which is the sole constituent member of the Committee of Creditors (CoC) of the

Corporate Debtor (CD). The hypothecator of the car (the CD) was a customer of KVB Anthiyur Branch and had been unable to repay the loan amount despite several opportunities being given to them.

Respondent further submitted that:

- i. That subsequently, after repeated follow-ups by the respondent to take custody of the car and the Manager of KVB Anthiyur Branch to repossess the car, the CD parked the car in front of KVB Anthiyur Branch and handed over the keys to the Manager. The car was hence repossessed by KVB.
- ii. That it was brought to her notice that there was no adequate parking space for the car and hence, during the 2nd CoC meeting, she informed the CoC and KVB (sole member) made a unilateral decision to sell the car as it deemed fit as they had no safe parking space for the car and proceeded to sell the car. The proceeds from the sale were credited directly into the CIRP account of the CD with KVB Anthiyur Branch.
- iii. That she had no role to play in her capacity as Resolution Professional in the sale of the said car.

**4.2.** With regards to the issue of sale of encumbered asset i.e., Innova Crysta Car during moratorium, section 14 (1)(b) of the Code provides as under:

***“14. Moratorium. –***

*(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -*

*(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein; ...”*

**4.3.** The moratorium under the Code is a period wherein no judicial proceedings for recovery, enforcement of security interest, sale or transfer of assets, or termination of essential contracts can be initiated or continued against the CD. The said provision ensures that there is no devolution of a CD's assets during the CIRP so that the CD can be continued as a going concern and if the assets of the CD are alienated during the pendency of the proceedings it will seriously jeopardize the interest of all the stakeholders.

**4.4.** Further, section 25(1) of the Code also provides as under:

***“25. Duties of resolution professional. –***

*(1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.”*

**4.5.** In the instant matter, the DC notes the submission of the respondent that there was no adequate parking space for the car and hence, during the 2nd CoC meeting, she informed the CoC and KVB made a unilateral decision to sell the car. The DC also observes that the proceeds from the sale were credited directly into the CIRP account of the CD with KVB Anthiyur Branch and ultimately there was no loss incurred to the corporate debtor. Therefore, the DC is inclined to take a lenient view

**5.0** The next allegation against the respondent was that Para 3 of IBBI Circular No. IP/005/2018 dated 16th January, 2018, requires that an insolvency professional shall disclose his

relationship, if any, with (i) the Corporate Debtor, (ii) other Professional(s) engaged by him, (iii) 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 three days from the event. However, disclosure of appointment of IRP and advocate which was required to be filed in the month of January 2019, was filed belatedly on 08th January 2021 i.e., after sharing of the draft inspection report with respondent.

- 5.1.** In this regard respondent in her response submitted that she filed the relationship disclosure with IIIP of ICAI on 08-01-2020 and not on 08-01-2021 and thus have not contravened any of the provisions as alleged in the SCN.
- 5.2.** An insolvency professional is bestowed with myriad duties. An insolvency professional is expected to exercise due diligence while performing his duties. His diligence should be reflected not only during the corporate insolvency resolution process but also while fulfilling any obligation as a professional member under the Code. In the present matter DC notes the submission of the respondent that she filed the relationship disclosure with IIIPI on 08-01-2020 and not on 08-01-2021. However, the contentions of the respondent that since she filed the relationship disclosure on 08-01-2020, have not contravened the provisions as mentioned in SCN is not acceptable because the relationship disclosure which was filed by the respondent on 08-01-2020 was required to be filed in the month of January 2019. At the same time DC notes that at the time when this lapse occurred, the implementation of the Code was in the nascent stage and the legal jurisprudence of this new insolvency regime was evolving. In this backdrop, DC is inclined to take a lenient view.

## **B. Gokul Kannan Benefits Limited.**

- 6.0** As per Regulation 13(2)(e) of the Insolvency Resolution Process for Corporate Persons Regulation 2016 provides that “the list of creditors shall be presented at the first meeting of the committee.” However, it is noted that list of creditors was not presented before the CoC by the respondent.
- 6.1.** The respondent in this connection has submitted that the list of creditors was presented during the 1st meeting of the CoC held on 02-03-2019 and that the same has been recorded in Para 4 of the aforesaid minutes as follows:
- “IRP informed that 40 claims were submitted by Financial Creditors who had submitted their claims in response to the public advertisement calling for submission of claims from the creditors of the Corporate Debtors within the due date i.e., 8th February 2019, and 36 claims were admitted.”*
- Further, the list of creditors was also filed before the Hon’ble National Company Law Tribunal (NCLT), Chennai Bench on 18-02-2019.
- 6.2.** With regard to the issue of non-submission of list of creditors in the 1<sup>st</sup> CoC meeting, the DC notes the submission of the respondent that the list of creditors was presented during the 1<sup>st</sup> meeting of the CoC held on 02-03-2019. The DC also noted the fact that the list of creditors was submitted before the NCLT on 18-02-2019, pursuant to the report certifying the constitution of committee of creditors under Regulation 17(1) of the CIRP Regulations. Hence, there appears to be no contravention on the part of the respondent.

**7.0** The next allegation against the respondent was that as per Regulation 4(A) of the CIRP Regulation clearly provides as under: -

- (1) on an examination of books of account and other relevant records of the corporate debtor, the interim resolution professional shall ascertain class(es) of creditors, if any.*
- (2) For representation of creditors in a class ascertained under sub-regulation (1) in the committee, the interim resolution professional shall identify three insolvency professional who are –*
  - (a) not his relatives or related parties*
  - (b) eligible to be insolvency professional under regulation 3 and*
  - (c) willing to act as authorised representative o-f creditors in the class.*
- (3) The interim resolution professional shall obtain the consent of each insolvency professional identified under sub-regulation (2) to act as the authorised representative of creditors in the class in Form AB of the Schedule.*

In this connection, it is noted that respondent failed to identify three authorised representatives for class of creditors being depositors and choice of the authorised representative was not provided to the creditors in the public announcement made on 27-01-2019. Further it is also noted that respondent appointed Mr. K. Muruganandan as authorised representative (AR) of her own choice for the class of creditors based on the Form AB dated 29-01-2019 received from Mr. K. Muruganandan post publishing Form A i.e., public announcement.

**7.1.** In response to this allegation respondent submitted that a letter listing out three candidates from which the creditors could choose an authorised representative was sent through post along with a blank Form CA through which a creditor could submit their claim was sent to every creditor. A majority of the creditors chose Mr. K. Muruganandan as their Authorised Representative and hence, he was appointed as the Authorised Representative for the Depositors; this appointment was subsequently approved by the Hon'ble NCLT, Chennai Bench vide order dated 01-03-2019 in MA/166/2019 in CP/1418/IB/2018.

**7.2.** In respect of this allegation DC notes that respondent failed to provide choice of three insolvency professionals in public announcement as required under regulation 6 (2) (bb) read with regulation 4A of the CIRP regulations. The DC notes that regulation 6(2) (bb) of CIRP regulations provides that:

**“6. Public announcement. –**

- (1) An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional.*
- (2) the public announcement referred to in sub-regulation (1) shall:*
  - (bb) “offer choice of three insolvency professionals identified under regulation 4A to act as the authorized representative of creditors in each class:”*

**7.3.** The responsibilities of the IRP/RP under the Code require highest level of standards, calibre and integrity which inspire confidence and trust of the stakeholders and the society. The role of an IP is vital to the efficient operation of the insolvency and bankruptcy resolution process. The IP forms a crucial pillar upon which rests the credibility of the entire resolution process. For that purpose, the code provides for certain duties, obligations for undertaking due diligence in conduct of insolvency process to establish integrity, independence, objectivity, and professional competence in order to ensure credibility of both process and profession as well.

- 7.4.** The DC notes the submission of the respondent that a letter listing out three insolvency professionals from which the creditors could choose an authorised representative was sent through post to every creditor, along with a blank Form CA through which a creditor could submit their claim.
- 7.5.** The DC notes that though the respondent did not offer a choice of three insolvency professionals in the public announcement. However, respondent provided an opportunity to the class of creditors by sending them a separate letter offering the choice of three insolvency professionals identified under regulation 4A to act as the authorised representative and thereby prevented the creditors from getting deprived of their legitimate right to appoint the authorised representative of its own choice. The DC also noted the fact that vide order dated 01-03-2019 the NCLT appointed Mr. K. Muruganandan as authorized representative of class of creditors (depositors). In the above given scenario DC is inclined to take a lenient view.
- 8.0** The next allegation against the respondent was that as per Section 22(1) of the Code “*the first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.*” However, it is noted that respondent failed to convene the first CoC meeting within the time as stipulated under the Code.
- 8.1.** In respect of this allegation respondent submitted that while the CoC was constituted on 18-02-2019, the appointment of the Authorized Representative for the Depositors was approved by the Hon’ble NCLT in MA/166/2019 in CP/1418/IB/2018 vide order dated 01-03-2019 and thereafter she convened 1st CoC meeting on 02-03-2019.
- 8.2.** With regard to the issue of convening 1<sup>st</sup> CoC meeting beyond the timelines as required under section 22(1) of the Code, the DC notes the submission of the respondent that while the CoC was constitute on 18-02-2019 however, the appointment of the authorised representative was only approved by the NCLT vide order dated 01-03-2019 and thereafter respondent convene the 1<sup>st</sup> CoC meeting on 02-03-2019. Since the circumstances was beyond the control of the respondent, the DC accepts the submissions of the respondent.
- 9.0** The next allegation against the respondent was that as per Regulation 25(3) of the CIRP Regulations the resolution professional shall take a vote of the members of the committee present in the meeting, on any item listed for voting after discussion on the same. However, it is noted that the voting sheet provided by the respondent to the IA does not contain sufficient information pertaining to the voting conducted during the meetings and failed to provide the voting sheet verified/approved by the AR appointed for class of creditors.

Further section 21(6A) of the Code provides that “*where a financial debt-*

- (a) *is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all financial creditors, such trustee or agent shall act on behalf of such financial creditors.*
- (b) *Is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who*

*shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;*

- (c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.”*

Pursuant to the above section, it is apparent that only the authorized representative (AR) of a class of creditors is authorized to attend the meetings of CoC. However, on perusal of the minutes of the second CoC meeting, it is noted that respondent allowed one depositor namely Mr. K S Venkata Raman to attend the second CoC meeting and accordingly he attended the second CoC meeting.

- 9.1.** Respondent in this regard has submitted that there are sufficient records to prove that she has complied therewith, as evidenced by the voting sheets for the 4th CoC meeting held on 18-10-2019.

Respondent further submitted that

- (i) while section 21 (6A) mandates that the authorised representative attends the meeting, it does not prohibit any creditor from a class from also attending meetings of the CoC. Further, the same has also not been prohibited by any other provision in the Code or and Regulations thereto.
- (ii) That the Depositor Mr. K. S. Venkata Raman, a senior citizen had received notice of the meeting from Mr. K. Muruganandan and arrived at the stipulated time and place to personally witness the meeting after having travelled a great distance, enduring immense physical distress, even though it was not required of him to be present. It is extremely pertinent to note that the said depositor was only a silent spectator at the meeting and at no point was he allowed to give any inputs. All representations for his entire class were carried out by the authorised representative. Further he was not allowed to and did not vote on any matters.

- 9.2.** Under the Code, RP plays a central role in resolution process of the CD, he is appointed by the AA as an officer of the Court to conduct the resolution process and it is the duty of RP to conduct CIRP with integrity and accountability in the process and to take reasonable care and diligence while performing his/her duties. Therefore, it becomes imperative for an IP to perform his duties with utmost care and diligence.

- 9.3.** The DC notes the submission of the respondent that the Depositor Mr. K. S. Venkata Raman, a senior citizen had received notice of the meeting from Mr. K. Muruganandan and arrived at the stipulated time and place to personally witness the meeting after having travelled a great distance, enduring immense physical distress, even though it was not required of him to be present. The DC further notes the submission of the respondent that the said depositor was only a silent spectator at the meeting and at no point was he allowed to give any inputs. All representations for his entire class were carried out by the authorised representative. Further he was not allowed to and did not vote on any matters. DC also notes that the some of the voting sheets which were earlier not provided inadvertently has now been provided by the respondent.

**9.4.** Further DC also notes that where the corporate debtor has at least 10 financial creditors in class, in order to represent the creditors in class in a simplified manner, an authorized representative be appointed to represent their concerns to the committee of creditors for the insolvency resolution under the provisions of Section 21 (6A) (b) of IBC & Regulation 16A (1) of CIRP regulations. The depositor i.e., Mr. K S Venkata Raman being a class of creditors, was anyhow a financial creditor and part of the CoC only representing through an authorized representative, which in any manner, did not attract any adverse impact to the CIRP and ultimately no harm was caused to the CIRP. Thus, in the above given scenario DC is inclined to take a lenient view.

**10.0** The next allegation against the respondent was that section 12 (2) of the Code provides that *“the resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent voting shares.”*

In this connection, it is noted that respondent convened 4<sup>th</sup> meeting of the CoC, without seeking any extension beyond 180 days from CoC/NCLT. The said meeting was convened on the 266<sup>th</sup> day from the commencement of CIRP.

Further, Section 33 of the Code provides that *“(1) Where the Adjudicating Authority, -*

- (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30; or*
- (b) rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall-*
  - (i) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter;*
  - (ii) issue a public announcement stating that the corporate debtor is in liquidation; and*
  - (iii) require such order to be sent to the authority with which the corporate debtor is registered*
- (2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six percent of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1)*

*Explanation- For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.”*

In the CIRP of Gokul Kannan Benefits Limited, it is noted by the DC that in the second CoC meeting respondent took approval from the CoC for not inviting expression of interest. In case where CoC is of the opinion that EoI was not required to be published, respondent should have

striven for early liquidation of the corporate debtor. However, neither respondent have invited the EoI nor have striven for early liquidation. In this connection, respondent submitted before the IA that she filed an application under section 33 for liquidation of the corporate debtor, and the same was rejected by the NCLT on grounds that the resolution for liquidation was not passed in the CoC meetings.

**10.1.** In response to this allegation respondent submitted that while she had made all efforts to strive early liquidation, it was the CoC which could arrive at a final decision with respect to liquidation.

Respondent further submitted that:

- (i) That while she could guide the CoC to take concrete steps toward a direction which they deemed fit, the final decision to apply for liquidation could not have been taken by her not only under the given circumstances but also according to the provision of the Code and Regulations thereto.
- (ii) To ensure that liquidation was sought for before the completion of the CIRP period, an application was attempted to be filed before the Hon'ble NCLT u/s 33 of the Code. However, the Registry stated that a resolution ought to be obtained from the CoC in this regard. It was for this reason that a 4th CoC meeting was convened on 18-10-2019.
- (iii) That due to poor attendance from the members in this meeting with only two out of 32 depositors being present, postal ballots were sent to the members. Despite this step, only 11 out of 32 members submitted their duly endorsed voting sheets by post. Due to a deadlock in the functioning of the CoC, an application u/s 33 of the IBC was filed by me before the Hon'ble NCLT, Chennai Bench on 27-11-2019. Subsequently, the Hon'ble Tribunal, ordered liquidation of the CD vide its order dated 23-12-2021 in IA/1251/2020 in CP/1418/IB/2018; the said order has also recorded all the facts stated hereinabove. In this regard, it is submitted that the sole purpose of convening the 4th CoC meeting was to obtain a resolution for liquidation and hence, it was unnecessary to obtain an extension for the same from the Hon'ble NCLT.

**10.2.** The objective of the Code is to resolve insolvencies, promote entrepreneurship, maximize valuation of assets, make available credit and balance the interests of all stakeholders, in a time bound manner. The IP is conferred under the Code, with vast powers to manage the affairs of the CD and to conduct the process of insolvency resolution. It is the duty of an IRP/ RP to perform and discharge his/ her duties in accordance with the Code and the Regulations made thereunder, in letter and spirit to achieve the objectives of the Code. Time is the essence in relation to running processes under the Code, and even minor delays have snowballing effect in terms of deterioration of value.

**10.3.** In the instant matter DC observes from the minutes of the 3<sup>rd</sup> CoC meeting dated 23-07-2019 the following was recorded regarding the issue of liquidation:

*"The RP informed the COC that the 180-day CIRP period was coming to a close on 25th July, 2019. The RP and the Authorised Representative, during the meeting had telephone conversations with four of the depositors, who were of the opinion that the ballot paper for resolution ordering liquidation should be sent to them by post, or the meeting can be conducted*



*after 21 days' notice. The decision to continue CIRP or order liquidation has been deferred to enable the Authorised Representative to call for a meeting of the financial creditors of the corporate debtor, and vote on the same."*

- 10.4.** The DC notes the submission of the respondent that the sole purpose of convening the 4th CoC meeting was to obtain a resolution for liquidation. Further DC notes from her submission that in the 3<sup>rd</sup> CoC meeting the issue pertaining to 'continue the CIRP' or to 'commence liquidation' was discussed wherein the respondent informed the actual status of the CIRP and therefore, it cannot be said that respondent did not inform the CoC about the process or has not approached the CoC for liquidation. It was the CoC who decided to defer the matter and asking the respondent to send the ballot paper for resolution ordering liquidation to them by post, and to convene the CoC meeting after 21 days' notice. In the given circumstances respondent cannot be held completely responsible for the lapse that has occurred. In this backdrop DC is inclined to take a lenient view.

### **C. Common issues among both the CIRPs**

- 11.0** As per Regulation 27 of the Insolvency Resolution Process for Corporate Persons Regulation 2016 provides that "*the resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.*" However, it is noted that respondent failed to appoint registered valuers, as prescribed under the Code.
- 11.1.** In this regard, respondent in her reply submitted that she determined that the respective CDs i.e., Gokula Kannan Chits Tamilnadu Private Limited and Gokul Kannan Benefits Limited had no assets which could be valued and the same has been recorded in the minutes of the 2nd CoC meetings held on 09-05-2019 and 13-03-2019 respectively.

Respondent further submitted that:

- i. That as per Section 20 subsection (2), the appointment of professionals is at the sole discretion of the Interim Resolution Professional if deemed necessary by them. Only if such appointment is deemed to be necessary would two registered valuers need to be appointed under Regulation 27 of the CIRP Regulations.
- 11.2.** The IP is to maintain integrity, by being honest, straight forward and forthright in all his professional relationships while conducting business during CIRP. His conduct has a substantial bearing on performance and outcome of the processes under the Code. He, therefore, is expected to function with reasonable care and diligence to ensure credibility of the process. It is imperative for an IP to perform his duties and functions with utmost care and diligence in time bound manner.
- 11.3.** Regulation 7(2)(a) and 7(2)(h) of the Insolvency and Bankruptcy Board of India (Insolvency Professional), Regulations, 2016 provides as under:
- "7. Certificate of Registration:*
- (1) ....
  - (2) *The registration shall be subject to the conditions that the insolvency professional shall–*

*(a) at all times abide by the Code, rules, regulations, and guidelines thereunder and the bye-laws of the insolvency professional agency with which he is enrolled".*

*(h) abide by the Code of Conduct specified in the First Schedule to these Regulations; and...*”

Clauses 13 and 14 of First Schedule of Code of Conduct for Insolvency Professionals under Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016 states as follows:

*Clause 13: An insolvency professional must adhere to the time limits prescribed in the Code and the rules, regulations and guidelines thereunder for insolvency resolution, liquidation or bankruptcy process, as the case may be, and must carefully plan his actions, and promptly communicate with all stakeholders involved for the timely discharge of his duties.*

*Clause 14: An insolvency professional must not act with mala fide or be negligent while performing his functions and duties under the Code”.*

**11.4.** The DC notes that regulation 27 of the CIRP Regulations provides for appointment of professionals. The regulation is reproduced below:

*“27. Appointment of Professionals. (1) The resolution professional shall, within seven days of his appointment but not later than forty-seventh day from the insolvency commencement date, appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35.”*

**11.5.** With regard to the issue of non-appointment of the registered valuers to determine the fair value and liquidation value of the CD by the respondent, the DC notes that it is duty of RP to appoint two registered valuers within forty-seventh day of the ICD. In the instant case, the DC notes the submission of the respondent that CDs i.e., Gokula Kannan Chits Tamilnadu Private Limited, and Gokul Kannan Benefits Limited had no assets which could be valued and the same has been recorded in the minutes of the 2nd CoC meetings held on 09-05-2019 and 13-03-2019 respectively. Relevant extracts from the minutes of the second CoC, in the CIRP of Gokula Kannan Chits Tamilnadu Private Limited is reproduced below:

*“The RP brought up the matter of appointment of 2 Valuation Professionals as per Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016. The Committee was of the opinion that since there were no assets of the CD, there was no need to unnecessarily appoint valuation professionals as required by the Regulation.”*

Relevant extracts from the minutes of the second CoC meeting, in the CIRP of Gokul Kannan Benefits Limited is reproduced below:

*“Appointment of Valuation Professionals: As there are no assets in the company, it was decided that appointing a valuation professional is an unnecessary expenditure, and hence need not be appointed.”*

**11.6.** DC heard the respondent carefully and found no malafide intention on the part of the respondent and in the above given scenario, no contravention can be attributed on part of the respondent.

**12.0** As per Section 25 (2) (g) read with section 29(1) of the Code casts a duty upon resolution professional to prepare an information memorandum (IM) in such a manner containing such relevant information as may be specified by the Board for formulating a resolution plan.

Further, Regulation 36 (1) read with Regulation 36(4) of the Insolvency Resolution Process for Corporate Persons Regulation 2016 provides that the resolution professional shall share the Information Memorandum (IM) in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier, after receiving an undertaking from a member of the committee to the effect that such member or resolution applicant shall maintain confidentiality of the information and shall not use such information to cause undue gain or undue loss to itself or to any other person and comply with the requirements under sub-section 2 of section 29.

In this connection, respondent failed to provide (a) copy of Information memorandum (IM) and (b) confidentiality agreement obtained from the Karur Vysya Bank while sharing the IM, to IA. In this backdrop it was alleged that respondent has either not prepared the IM in accordance with the applicable provisions under the Code or had shared the IM without obtaining confidentiality agreement from Karur Vysya Bank.

**12.1.** Respondent in her reply (for Gokula Kannan Chits Tamilnadu Private Limited) submitted that she prepared the Information Memorandum as required under the provisions of the Code and subsequently, a hardcopy of the confidentiality agreement had been sent by post to the Manager of KVB Anthiyur Branch. However, despite her best efforts, there was no response from his side.

Respondent further submitted that:

- i. That she was constrained to share the Information Memorandum with KVB vide email dated 06-04-2019 to ensure that it was shared with the CoC within the statutory time limit contained in Regulation 36(1) of the CIRP Regulations.
- ii. That during a telephonic conversation 09-05-2019 with the Manager of KVB Anthiyur Branch, she again requested him to sign the confidentiality agreement. The same has been recorded by the respondent in the diary maintained by her for the CD.
- iii. For Gokul Kannan Benefits Limited, respondent replied that the Information Memorandum was prepared in a timely manner and was shared with Mr. K. Muruganandan, authorised representative of the Depositors vide email dated 06-04-2019.
- iv. That a confidentiality agreement dated 05-04-2019 was also executed before the Information Memorandum was shared with the authorised representative.
- v. That she cooperated with the Inspecting Authority of IIIP of ICAI in every step of their inspection process and have provided them with all the information required by them at that time, despite having numerous personal and professional commitments. Further, the COVID-19 pandemic had prevented her from providing many more documents to substantiate her responses.

**12.2.** With regard to the issue of non-preparation of the IM, and sharing of IM without obtaining confidentiality agreement, the DC notes that in the CIRP of Gokula Kannan Chits Tamilnadu Private Limited respondent failed obtain confidential agreement from Karur Vysya Bank, as

required under regulation 36 (4) of the CIRP regulations. The DC notes that regulation 36 of the CIRP regulations provides that:

*“36. Information memorandum.*

*(1) Subject to sub-regulation (4), the resolution professional shall submit the information memorandum in electronic form to each member of the committee within two weeks of his appointment, but not later than fifty-fourth day from the insolvency commencement date, whichever is earlier.”*

**12.3.** The DC notes the submission of the respondent that despite her best efforts, she was not able to get the confidentiality agreement signed by the Karur Vysya Bank. The DC further notes the submission that respondent had sent a letter to Karur Vysya Bank asking them to sign the confidentiality agreement. However, the same remained unanswered even after repeated requests made by the respondent. As per her submission, she could not obtain confidential agreement despite her best efforts in the context of given facts and circumstances. DC notes the difficulties, as explained by the respondent, and accepts the submission of respondent.

**12.4.** DC further notes the allegation that the respondent did not provide the copy of information memorandum in both the CIRPs, and confidentiality undertaking, asked for by the IA. It is duty of an IP to produce all records in his/her custody or control and furnish such statements and information relating to its activities within such time as the IA may require. Respondent was asked to provide certain documents of the assignments being handled by her. Respondent was unable to submit the required documents to the IA in the stipulated timelines, as provided by IA.

**12.5.** In this connection DC notes the submission of the respondent that in Gokul Kannan Benefits Limited, the Information Memorandum was prepared in a timely manner and was shared with Mr. K. Muruganandan, authorised representative of the Depositors vide email dated 06-04-2019 after obtaining confidential agreement dated 05-04-2019 from the authorised representative. The DC further notes the submission of the respondent that due to covid-19 lockdown was in effect and pandemic had prevented her from providing many documents to substantiate her responses and DC also noted the fact that respondent has now provided the required documents. The DC notes that the pandemic situation is as an exceptional circumstance and accepts respondents' contention as the pandemic situation was beyond her control and the same appears to have caused lapse in submission of the information. Therefore, the DC takes a lenient view.

**13.0** The next allegation against the respondent was that Regulation 20 (1) of the Insolvency Resolution Process for Corporate Persons Regulation 2016, provides that *“a notice by electronic means may be sent to the participants through e-mail as a text or as an attachment to e-mail or as a notification providing electronic link or Uniform Resource Locator for accessing such notice.”*

Section 24(3) (b) of the Code provides that the resolution professional shall give notice of each meeting of the committee of creditors to-

*“(b) members of the suspended Board of Directors or the partners of the corporate persons.”*

However, it is noted that respondent failed to provide the required records to prove the compliance of section 24(3) of the Code and Regulation 20 of CIRP Regulations in the CIRP

of Gokula Kannan Chits Tamilnadu Private Limited and Regulation 20 of CIRP Regulations in the CIRP of Gokul Kannan Benefits Limited.

- 13.1.** with regard to the CIRP of Gokula Kannan Chits Tamilnadu Private Limited, respondent submitted that she has complied with this requirement and provided notice to the members of the Suspended Board of Directors of the CD. She added that both members of the suspended board of directors of the CD are husband and wife and have a common email ID—[best.psakthi@gmail.com](mailto:best.psakthi@gmail.com) and notice of all meetings of the CoC have been sent to this email ID, hence not violated any of the provisions.
- 13.2.** In respect of the CIRP of Gokul Kannan Benefits Limited respondent in her reply submitted that she had sent the notices for all CoC meetings to Mr. K. Muruganandan, the Authorised Representative for the Depositors and she was informed that as the Authorised Representative of that class, Mr. K. Muruganandan in turn shared the notices through registered post to every depositor. Respondent also submitted that she cooperated with the Inspecting Authority of IIP of ICAI in every step of their inspection process and have provided them with all the information required by them at that time, despite having numerous personal and professional commitments. Further, the COVID-19 pandemic had prevented her from providing many more documents to substantiate her responses.
- 13.3.** DC notes the allegation that the respondent did not provide certain information/documents asked for by the IA. It is duty of an IP to produce all records in his custody or control and furnish such statements and information relating to its activities within such time as the IA may require. Respondent was asked to provide certain documents of the assignments being handled by her. Respondent was unable to submit the required documents to the IA in the stipulated timelines, as provided by IA.
- 13.4.** The DC note the submission of the respondent that she had sent all the notices for all the CoC meetings as required under the Code. DC also noted the fact that the documents required has now been provided by the respondent. The DC further notes the submission of the respondent that due to covid-19 lockdown was in effect and pandemic had prevented her from providing many documents to substantiate her responses. The DC notes that the pandemic situation is as an exceptional circumstance and accepts respondents' contention as the pandemic situation was beyond her control and the same appears to have caused lapse in submission of the information. Therefore, the DC takes a lenient view.
- 14.0** The next allegation against the respondent was that as per Regulation 33(4) of the CIRP Regulation, "the amount of expenses ratified by the committee shall be treated as insolvency resolution process cost."

Further, Regulation 34 of the CIRP Regulation, provides that "the committee shall fix the expenses to be incurred on or by the resolution professional and the expenses shall constitute insolvency resolution process costs."

"Explanation. – For the purpose of this regulation, "expenses" include the fee to be paid to the resolution professional, fee to be paid to insolvency professional entity, if any, and fee to be paid to professionals, if any, and other expenses to be incurred by the resolution professional."

However, in this connection, it is noted that other expenses incurred by the respondent were not ratified by the CoC. As per Form II other expenses amounting to Rs. 12000 and cost of

public announcement amounting to Rs 11860 is mentioned, which is even not recorded in the minutes of meetings.

- 14.1.** In respect of the levied allegation respondent submitted that the fee to be paid to the RP, which also forms a part of “expenses” as stated under Regulation 34 of the CIRP Regulations was ratified by the CoC. Respondent further submitted that it was not necessary to obtain ratification from the CoC for any other expenses as the amount was directly paid by Mr. Saktivel, erstwhile Director of the Corporate Debtor from his personal account.
- 14.2.** In respect of other expenses mentioned in Form II respondent submitted that other expenses of Rs.12,000/-, and expenses on public announcement of Rs.11,860/-were paid by the Applicant. Since all these amounts were paid for by the Applicant, they did not form a part of the CIRP cost and hence need not be ratified by the CoC.
- 14.3.** The DC notes that Section 5(13) of the Code defines the term „Insolvency Resolution Process Costs” (IRPC) as follows –  
“5 (13). *“insolvency resolution process costs” means—*  
(a) *the amount of any interim finance and the costs incurred in raising such finance;*  
(b) *the fees payable to any person acting as a resolution professional;*  
(c) *any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;*  
(d) *any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and*  
(e) *any other costs as may be specified by the Board.*

Further, Regulation 31 of CIRP Regulations, 2016 provides that:

31. *“Insolvency Resolution Process Costs under Section 5(13)(e) shall mean –*  
(a) *amounts due to suppliers of essential goods and services under Regulation 32;*  
(b) *amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);*  
(c) *expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;*  
(d) *expenses incurred on or by the interim resolution professional fixed under Regulation 34; and*  
(e) *other costs directly relating to the corporate insolvency resolution process and approved by the committee.*

The DC also notes that Regulation 33(4) of the CIRP Regulations provides:

- “33(4) Costs of the interim resolution professional:*  
(1) ...  
(4) *the amount of expenses ratified by the committee shall be treated as insolvency resolution process cost.”*

- 14.4.** Further DC notes the submission of the respondent that other expenses incurred by the respondent i.e., Rs. 12000 and expenses on public announcement amounting to Rs 11860 were paid by the applicant and was not made part of IRPC hence, need not be ratified by the CoC. On a combined reading of the above provisions and response of the respondent there appears to be no contravention on the part of the respondent.

**15.0** In view of the facts, as stated above, the DC is inclined to take a lenient view. 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 IIIPI, DC hereby disposes of the SCN without any adverse directions against the respondent. However, DC hereby advises the respondent as follows: -

- (i) That the respondent should take reasonable care and be extremely careful, diligent while performing her duties under the Code.
- (ii) That respondent should maintain and upgrade his professional knowledge and skills to render competent professional services.
- (iii) That respondent must adhere to the time limits prescribed in the Code and the rules, regulations, and guidelines thereunder for insolvency resolution, liquidation, or bankruptcy process, as the case may be, and must carefully plan her actions, and promptly communicate with all stakeholders involved for the timely discharge of her duties.

**16.0** This order shall come into force from the date of its issue.

**17.0** A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.

**Date: 14-06-2022**

**Place: Delhi**

**CERTIFIED TRUE COPY**

**Sd/-**

**Mr. Satish Marathe (Chairman)**

**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.