

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

DC. No. IIPI/DC/122/2021-22

ORDER

In the matter of Mr. Ramakrishnan Sadasivan (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/122/2021-22 dated 28-03-2022 issued to **Mr. Ramakrishnan Sadasivan** (Respondent), Old no.22, New no.28, Menod Street, Purasawalkam, Chennai, Tamil Nadu-600007. Respondent is a professional member of the Indian Institute of Insolvency Professionals of ICAI (IIPI) and registered with IBBI with Registration No – IBBI/IPA-001/IP-P00108/2017-2018/10215.
- 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 assignment handled by him as an IRP/RP in the CIRP of **Orchid Health Care Private Limited**. The SCN alleged the contravention of the provisions of Section 208(2)(a) and (e) of the Insolvency and Bankruptcy Code, 2016; Regulation 27 of the Insolvency Resolution Process for Corporate Persons Regulation 2016; Regulation 7(2)(a) and (h) of IBBI (Insolvency Professional) Regulation, 2016, read with clauses 13 and 14 of the Code of Conduct for Insolvency Professionals, specified under First Schedule of IBBI (Insolvency Professionals) Regulations, 2016.
- 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 07-09-2022. 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.
- 4.0 Allegation:** Regulation 27 of the CIRP Regulations provides that *“(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.”*

Further, Regulation 35 of the liquidation process Regulation 2016 provides that: -

“(1)Where the valuation has been conducted under regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or regulation 34 of the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, as the case may be, the liquidator shall consider the average of the estimates of the values arrived under those provisions for the purposes of valuations under these regulations.

(2) In cases not covered under sub-regulation (1) or where the liquidator is of the opinion that fresh valuation is required under the circumstances, he shall within seven days] of the liquidation commencement date, appoint two registered valuers to determine the realisable

value of the assets or businesses under clauses (a) to (f) of regulation 32 of the corporate debtor.”

In this connection, it was noted that in the CIRP of Orchid Health Care Private Limited, respondent failed to appoint registered valuers, not only in the CIR Process but also during the liquidation as prescribed under the Code, even though as per the balance sheet dated 31st March 2019, securities and financial assets are appearing for Rs.239.64 crores.

4.1. Submissions: In response to the above levied allegations, respondent submitted the entire amount of Rs. 239.64 crores were due from M/s. Orchid Pharma Limited” Which is a group company of the corporate debtor. The 1,94,08,575 equity shares were held as investment in Orchid Pharma Limited which was also undergoing CIRP. The shares held as investment in Orchid Pharma limited was under pledge with the lenders and moreover based on the terms provided in the resolution plan obtained for Orchid Pharma Limited, after reduction and consolidation of the share capital the number of shares held as investment by Orchid Health Care private Limited would get reduced to 90,000 shares (approx.) from 1,94,08,575 shares. Thus, the chance of realizability was remote. The above shares have already been pledged with the Financial Creditors and hence there was no value realizable to the liquidation estate. The NCLT Order approving the dissolution of the Corporate Debtor had also made note of the fact of nonrealizability of the shares held in Orchid Pharma Limited.

Relevant extracts from the NCLT order dated 21-08-2019 is reproduced hereunder:

"On having this applicant ascertained that no assets are lying in the company and as to the shares of the Corporate Debtor belonging to the promoters of the company will not have any value because the associate company called M/s. Orchid Pharma Limited has already been in CIRP Process, therefore these promoters will not get any value from those shares"

Respondent further added that:

- i. The Corporate Debtor being Orchid Healthcare Private Limited (OHPL) had issued a Corporate Guarantee vide Agreement dated 02-07-2014 on behalf of Orchid Pharma Limited borrowings, to all CDR lenders. The Corporate Guarantee formed part of the Master Restructuring Agreement (MRA) dt 07-06-2014. In the MRA, the total dues to CDR lenders after Restructuring was arrived at Rs. 3156.80 Crores. However, the MRA for Orchid Pharma fell through and CIRP was initiated by the Lenders. Meanwhile, OHPL was ordered for CIRP vide Order dt. 27-03-2019 by NCLT Chennai. All the Lenders to Orchid Pharma Limited had invoked the Corporate Guarantee issued by OHPL and thus had filed claims with the Interim Resolution Professional (respondent) of OHPL. Thus, the claims filed on OHPL pertained to the borrowings of Orchid Pharma Limited and was not of the nature of direct liability of OHPL. This being the sum and substance of the case, all the lenders of the Corporate Debtor - OHPL and Orchid Pharma were more likely the same lenders. When OHPL was under CIR Process, a Resolution Plan was received for Orchid Pharma Limited. The Resolution Plan explicitly provided that "plan proposes to pay NIL amount to any Related Party and/or Connected Persons of the Corporate Debtor and/or of the existing Promoter/Promoter Group of the Corporate Debtor." Since there were common lenders to both the companies, the Financial Creditors were privy to the Resolution Plan received by Orchid Pharma Limited. Eventually it was concluded that due from Orchid Pharma

Limited would be written off by the Resolution Applicant since OHPL is a related Party to Orchid Pharma Limited.

- ii. That in the first CoC meeting held on 25-04-2019, he informed the CoC, on the valuation of the securities/financial assets. However, considering the non-realizable nature of the assets, the CoC members were of the view that any expenses incurred on valuation would be an additional burden without any benefits and hence preferred no valuation be undertaken with respect to SFA.
- iii. During the course of personal hearing respondent also added that even his fee as IRP/any expenses, was not ratified by the CoC, as the CoC was not interested in spending/ratifying any expenses w.r.t. the CIRP of the CD and even in the first CoC meeting, the CoC expressed their views for early liquidation/ dissolution.

4.2. Finding: 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.

4.3. 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”.

4.4. 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.”

4.5. 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. Since 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. In the instant case, the DC took note of the submissions of the respondent. Further DC notes from the submission of the respondent that in the 1st CoC meeting the issue pertaining to ‘appointment of registered valuers’ was discussed wherein the respondent informed the CoC about the actual status of the CIRP and the process/requirement of appointing the valuers, therefore, it cannot be said that respondent did not inform the CoC about the process or has not invested his efforts in appointing the values as required under the Code. It was the CoC who decided to go for early liquidation/dissolution and was not ready to fund the CIRP/ratify the expenses pertaining to the CIRP of the CD.

Relevant extracts from the minutes of the first CoC meeting is reproduced hereunder:

“IRP further added that it is necessary to ascertain the liquidated value as defined vide Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and therefore 2 Valuers will have to be appointed for valuation of financial assets (shares held in Orchid Pharma Ltd), being the only asset of corporate debtor.

But the members of the CoC were of the following view, that the company does not possess any valuable assets other than the shares held as investment in Orchid Pharma Ltd. Since Orchid Pharma Ltd is also a company which is currently undergoing the process of CIRP, the value that the shares (investment of Orchid Health Care Private Limited) could fetch would not be anything significant compared to the quantum of claim submitted by the creditors on Orchid Health Care Private Limited. Therefore, further amount, if any, spent in the process of CIRP would only be an additional cash outflow without any additional benefits. Therefore, they wanted to go for liquidation immediately without appointing any Valuers or Statutory Auditors or preparing any Information Memorandum.”

4.6. DC heard the respondent carefully and found no malafide intention on the part of the respondent and in view of the circumstances, as stated in the foregoing paragraph, respondent cannot be held completely responsible for the lapse that has occurred. In this backdrop DC is inclined to take a lenient view.

5.0 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 IIIPI, DC hereby disposes of the SCN with caution to the respondent for being more careful in future while handling CIRPs. DC further advises the respondent as follows: -

- (i) That the respondent should take reasonable care and be extremely careful, diligent while performing his 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 and must carefully plan her actions, and promptly communicate with all stakeholders involved for the timely discharge of her duties.

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

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

Date: 22-10-2022

Place: Delhi

CERTIFIED TRUE COPY

Sd/-

Mr. Satish Marathe (Chairman)

Mr. Satpal Narang (Member)

CA. Aniket Talati (Member)

CA. Rahul Madan (Member)

Copy to:

1. Insolvency and Bankruptcy Board of India.

2. Indian Institute of Insolvency Professionals of ICAI- Members Record.