

ICSI Institute of Insolvency Professionals

(Disciplinary Committee)

ICSI IIP/DC/06/2019

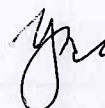
21st November, 2019

ORDER

(Under Part III of Disciplinary Policy read with Clause 24(1)(a) of Bye Laws of ICSI Institute of Insolvency Professionals)

1. Background

- 1.1 The Disciplinary Committee of ICSI IIP, vide its Interim Order dated 11th March, 2019 permitted M/s. Aruna Hotels Ltd. to file an amended complaint and directed Mr. Venkataramanrao Nagarajan to file a response within two weeks from the receipt of the amended complaint. The Respondent i.e. Mr. Venkataramanrao Nagarajan was directed to file a specific response within a period of maximum two weeks thereafter i.e., on or before 10th April, 2019. It was further mentioned that failure by the Respondent to file a response within the stipulated time shall be treated as the Respondent is not keen to counter any of the allegations.
- 1.2 Meanwhile, Mr. Nagarajan preferred a Writ Petition before Hon'ble Madras High Court wherein vide order dated 07.06.2019, the Writ Petition was dismissed as withdrawn, with the liberty to Mr. Nagarajan to file written objections raising the ground of inherent lack of jurisdiction before the Disciplinary Committee of ICSI IIP on or before 14.06.2019. Mr. Nagarajan further raised his objections on the same vide his letter dated 12.06.2019.
- 1.3 The Disciplinary Committee issued a notice dated 8th August, 2019 directing Mr. Nagarajan to appear for personal hearing before the Disciplinary Committee at its meeting on Monday, 19th August, 2019. After the personal hearing, the Disciplinary Committee directed Mr. Nagarajan to file his reply *on the basis of facts* as mentioned in the amended Complaint filed against him. Mr. Nagarajan submitted his reply dated 25.08.2019 to the Secretariat.



2. Based on the amended complaint received, reply dated 25.08.2019 filed by Mr. Nagarajan and documents available on records, the Disciplinary Committee broadly observed as follows:

2.1 **Alleged Contravention**

Prior and proper physical notice of the first meeting of the Committee of Creditors (CoC) was not given to the suspended Board of Directors of the Corporate Debtor viz. Aruna Hotels Limited. The meeting was conducted abruptly not adhering to timelines specified.

Submissions of Mr. V. Nagarajan

Mr. Nagarajan submitted that meeting was scheduled for 11am on 14.12.2017 at Chennai. Notice through email was sent at 10:57 am on 13.12.2017 without the Agenda for the meeting. Further the Agenda for the meeting was sent by e-mail dated 13.12.2017 at 04:28 pm.

Findings of Disciplinary Committee

Pursuant to Regulation 19(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Disciplinary Committee observed that it is not necessary to provide physical notice of the meeting of committee of creditors. Notice by electronic means can also be given not less than 5 days in accordance with Regulation 20 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. As per Regulation 19(2) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the committee may reduce the notice period from five days to such other period of not less than twenty-four hours, as it deems fit. Regulation 21 (3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for the contents that should be included in a notice of the meeting.

The Disciplinary Committee further observed that in terms of Regulation 19 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Mr. Nagarajan failed to give notice for 1st CoC meeting 5 days prior to the meeting. Mr. Nagarajan has clearly violated Regulation 19 (1) and also Regulation 21 (3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



2.2 Alleged Contravention

The Minutes of the 1st CoC meeting were not shared with suspended Board of Directors of the Corporate Debtor and the same was shared after 225 days from the date of meeting.

Submissions of Mr. V. Nagarajan

RP submitted that though there was a delay in circulating the 1st CoC minutes but the contention that the minutes were circulated on 26.07.2018 is false. Mr. Nagarajan further submitted that 2nd meeting of CoC was held on 10.02.2018 and the minutes of 1st CoC were approved in the 2nd meeting of CoC as evident by the minutes of 2nd CoC meeting.

Findings of Disciplinary Committee

Pursuant to Regulation 24(7) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Disciplinary Committee observed that Mr. Nagarajan failed to circulate the minutes of the meeting to all participants by electronic means within forty eight hours of the said meeting.

2.3 Alleged Contravention

'M/s. Kgeyes Residency Private Limited' was allowed to be a part of the 2nd CoC meeting held on 10.02.2018 irrespective of the fact that the claim of M/s. Kgeyes Residency Private Limited was already settled with full and final amount of Rs. 5,78,16,187 through a Memo of Compromise dated 31.07.2015 and a settlement order was also passed in D.A. No. 1024 of 2014 by the High Court of Madras. Though the subsequent claim of M/s. Kgeyes Residency Private Limited amounting to Rs. 88,32,940/- was also dismissed through the award passed by Arbitrator, Mrs. Chitra Sampath on 30.12.2017.

Submissions of Mr. V. Nagarajan

Mr. Nagarajan submitted that the Arbitration award was passed on 30.12.2017, during the pendency of CIRP, which should be considered as null. Further, the Arbitrator held that the claim was not arbitral as the same was not covered by the Arbitration Agreement. Therefore, there was no bar on admitting the claim of M/s Keyges Residency Private Limited as a Financial Creditor under the CIRP.



Findings of Disciplinary Committee

The Disciplinary Committee was of an opinion that in view of Section 14 (1) (a) of the Insolvency and Bankruptcy Code, 2016, moratorium will apply on arbitration on the commencement of Insolvency proceedings against the Corporate Debtor. Since the CIRP was initiated on 17th November, 2017 and Arbitral award was passed on 31.12.2017, therefore Section 14 (1) (a) of the Insolvency and Bankruptcy Code, 2016 was applicable on the pending arbitral proceedings.

In view of the same, the DC does not find any merit in this allegation.

2.4 Alleged Contravention

Complainant alleged that vide email dated 07.02.2018, RP i.e. Mr. Nagarajan sought a demand draft of Rs 1.77 Lakh as valuer fee and the same was returned by the RP after the closure of his term without obtaining the valuation report.

Submissions of Mr. V. Nagarajan

Mr. Nagarajan submitted that the valuation could not be done as during CIRP the hotel was shut down and renovation work was going on. In absence of the records and non-co-operation, valuation could not be done.

Findings of Disciplinary Committee

The Disciplinary Committee observed that Mr Nagarajan was appointed as Interim Resolution Professional on 17th November, 2017 and thereafter appointed as Resolution Professional by the Committee of Creditors but in compliance with Regulation 27 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, failed to appoint registered valuers within seven days of his appointment.

3. Order

3.1 In view of the above, the Disciplinary Committee finds that Mr. Venkataramanrao Nagarajan has contravened the provisions of Sec 208(2)(a) (b) of the Insolvency and Bankruptcy Code, 2016, Regulation 19 (1), 21 (3) ,24(7), 27 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, , Regulation 7(2)(a), (h) of the IBBI (Insolvency Professionals) Regulations, 2016.

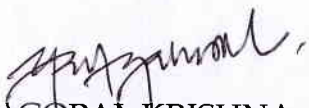
3.2 The Disciplinary Committee issues following directions:

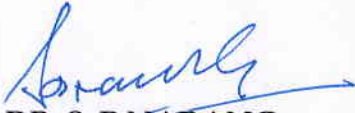


- (i) A monetary penalty of INR 10,000 (Rupees Ten thousand only) on Mr. Venkataramanrao Nagarajan and directs him to deposit the penalty amount by a demand draft payable in favour of the ICSI Institute of Insolvency Professionals within 30 days of the issue of this order. The Agency shall in turn deposit the said penalty amount in the Insolvency and Bankruptcy Fund.
- (ii) Mr. Venkataramanrao Nagarajan shall undergo the pre-registration educational course specified under regulation 5(b) of the Insolvency and Bankruptcy Board of India (Insolvency professionals) Regulations, 2016 from ICSI Institute of Insolvency Professionals to improve his understanding of the Code, and regulations made thereunder, before accepting any assignment under the Insolvency and Bankruptcy Code, 2016.
- (iii) Mr. Venkataramanrao Nagarajan shall abide by all the provisions of the Insolvency and Bankruptcy Code, 2016 and rules, regulations made thereunder in future otherwise, necessary actions shall be taken against him.

Accordingly, the Complaint is disposed off.

- 3.3 This order shall come into force on expiry of 30 days from the date of its issue.
- 3.4 A copy of this order shall be forwarded to the Insolvency and Bankruptcy Board of India.


MR. GOPAL KRISHNA AGARWAL
(CHAIRMAN)


DR. S. P. NARANG
(MEMBER)