

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA  
(Disciplinary Committee)

No.IBBI/DC/108/2022

24<sup>th</sup> June, 2022

**ORDER**

**This Order disposes the Show Cause Notice (SCN) No.IBBI/IP/INSP/2021/67/3366/508 dated 8<sup>th</sup> April 2022 issued to Mr. Partha Sarathy Sarkar, Insolvency Professional under section 220 of the Insolvency and Bankruptcy Code, 2016 read with regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017( Inspection Regulations) and regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations 2016 (IP Regulations). Mr. Partha Sarathy Sarkar is a Professional Member of ICSI Institute of Insolvency Professionals (ICSI-IIP) and an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (Board/IBBI) with Registration No. IBBI/IPA-002/IP-N00239/2017-2018/10690.**

**1. Developments in relation to resolution of the CD**

- 1.1. The Hon'ble NCLT, New Delhi (AA) *vide* its order dated 21.08.2019 admitted the application filed by Mr. Anil Kheterpal under section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) for initiating Corporate Insolvency Resolution Process (CIRP) against Innovari Technologies Pvt. Ltd. (CD) and appointed Mr. Partha Sarathy Sarkar as an Insolvency Resolution Professional (IRP) who was later confirmed as Resolution Professional (RP).
- 1.2. As per the latest information filled by Mr. Partha Sarathy Sarkar in relation to CIRP Form 7, he has conceded that "*IM not issued to CoC within 51 days of the Public Announcement*". Detailing reason for the same, it has been mentioned that matter is being pending adjudication by Hon'ble AA New Delhi Bench. It is pertinent to mention that under section 29(1) of the Code read with Regulation 36(1) of IBBI (Insolvency Resolution Process for Corporate Persons), Regulations 2016 (CIRP Regulations), the IM was to be submitted to each member of the Committee of Creditor not later than 54 days from the insolvency commencement date (ICD). At the time of filling Form 7 on 17<sup>th</sup> June 2022, Mr. Partha Sarathy Sarkar has mentioned that 1032 days have elapsed after the ICD but filing of IM is still pending despite this unusual delay.
- 1.3. Regulation 40B of CIRP Regulations read with Circular No.: IBBI/CIRP/41/2021 dated 18.03.2021 require filing of Form CIRP 7 by an IRP/RP for reporting the non-completion

of the activity within three days of specified date of such activity, and continue to file Form CIRP 7 every 30 days, until the said activity remains incomplete.

1.4. The IP has filed the Form CIRP-7 on various dates for the delayed activities as under:

S.No	Date of Submission of Form	Activities
1	31.03.2021	CIRP is not completed within 180 days
2	20.04.2022 and 18.05.2022	RFRP not issued within 51 days of issue of IM
3	17.06.2022	IM not issued to CoC within 51 days of Public Announcement

1.5. The above table indicates that the reporting of delay of activity “*IM not issued to CoC within 51 days of Public Announcement*” and “*RFRP not issued within 51 days of issue of IM*” is made subsequent to the activity “*CIRP is not completed within 180 days*”. In a normal CIRP, the activity of submission of IM and issuance of RFRP takes prior to the stipulated 180 days of the CIRP period. Thus, it is evident that filing of the Forms CIRP-7 on 20.04.2022, 18.05.2022 and 17.06.2022 is an afterthought of the IP for reporting the events. It may also be noted that these forms, despite having filed much later than their due dates, are filed without payment of the any fee in violation of Regulation 40B(4) of the CIRP Regulations..

## **2. Issuance of Show Cause Notice (SCN) and hearing before Disciplinary Committee (DC)**

2.1. The IBBI, in exercise of its powers under section 218 of the Code read with the IBBI Inspection Regulations, appointed an Inspecting Authority (IA) to conduct the inspection *vide* order dated 09.03.2021 on having reasonable grounds to believe that Mr. Partha Sarathy Sarkar had contravened provisions of the Code and Regulations made thereunder. The IA under sub-regulation (1) of Regulation 4 of the Inspection Regulations served a notice of inspection to Mr. Partha Sarathy Sarkar, *vide* email dated 17.03.2021 to inform that the IA will be undertaking inspection of the assignment (i.e. CIRP of Innovari Technologies Private Limited) handled by him and that all documents pertaining to this assignments may be mailed to the IA on or before 31.03.2021. However, in utter disregard to the notice, Mr. Partha Sarathy Sarkar *vide* his e-mail dated 19.03.2021 termed the Inspection Notice dated 17.03.2021 as misleading/defective/vitiated notice/communication and has termed the same as non-est/*void ab initio*. Later, Mr. Partha Sarathy Sarkar, *vide* his e-mail dated 31.03.2021 has stated that "*as a measure of abundant*

*caution and without prejudice to my rights, I am hereby providing the relevant links detailing/replying the questions in the documents annexed to the instant communication. It is also to be noted that the entire proceedings are sub-judiced before Hon'ble NCLT - New Delhi Bench; hence any findings which is in contradiction to the material on record is requested to be avoided."*

- 2.2. In accordance with the provisions as contained in the Inspection Regulations, the draft inspection report (DIR), prepared by the IA was shared with Mr. Partha Sarathy Sarkar on 20.04.2021, to which Mr. Partha Sarathy Sarkar submitted reply *vide* email dated 29.04.2021. The IA submitted the Inspection Report to IBBI on 10.05.2021.
- 2.3. Based on the material available on record including the Inspection Report, the Board issued a show cause notice (SCN) to Mr. Partha Sarathy Sarkar on 08.04.2022. The SCN alleged contravention of Section 208(2)(a) and 208(2)(e) of the Code, Regulation 35A of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clauses 3 and 5 of Code of Conduct as specified in the First Schedule of the IP Regulations. Mr. Partha Sarathy Sarkar replied to the SCN *vide* email dated 29.04.2022.
- 2.4. The IBBI referred the SCN, response of Mr. Partha Sarathy Sarkar to the SCN and the material available on record, to the DC for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Partha Sarathy Sarkar was given opportunity of virtual personal hearing before DC on 15.06.2022, however, despite evidence of electronic record that notice has been served on him in time, he did not appear for the same stating that he did not receive the VC Link for personal hearing on 15.06.2022. In view of the same, one more and last opportunity was given to Mr. Partha Sarathy Sarkar on 21.06.2022, however, he again opted to stay away from the proceedings, and *vide* e-mail, requested for rescheduling the personal hearing after 25.06.2022. As it being the second chance, Mr. Partha Sarathy Sarkar was requested *vide* e-mail dated 20.06.2022 to make himself available to attend personal hearing virtually on 21.06.2022 and make submission before DC. However, he neither responded nor turned up despite long wait. This left the DC with little option, but to pronounce the decision in the instant case on the basis of responses already submitted by him, presuming that he has no more submissions to make.

### **3. Consideration of the SCN**

- 3.1. The DC has considered the SCN, response of Mr. Partha Sarathy Sarkar to the SCN and other materials available on record and accordingly, proceeds to dispose the SCN.

#### **4. Alleged contraventions and submissions of the IP**

Contraventions alleged in the SCN and Mr. Partha Sarathy Sarkar's submissions thereof are summarized below:

##### **4.1. Contravention with regard to non-cooperation with IA**

- 4.1.1. IA *vide* email dated 17.03.2021, served a copy of the inspection notice to Mr. Partha Sarathy Sarkar and requested all the documents pertaining to the aforementioned assignment. However, Mr. Partha Sarathy Sarkar *vide* email dated March 19, 2021, termed the Inspection Notice dated March 17, 2021, as misleading/defective/vitiated notice/communication and also as *non-est/ void ab initio*. *Vide* email dated March 31, 2021, Mr. Partha Sarathy Sarkar provided a few documents and links to the IA. However, Mr. Partha Sarathy Sarkar did not provide crucial documents and necessary documents including notices of all CoC meetings, documents evidencing that the minutes of all CoC meetings were circulated within 48 hours in terms regulation 24(7) of the CIRP Regulations, minutes of all the CoC meetings, e-voting results etc. at the time of inspection to the IA.
- 4.1.2. According to regulation 4(4) of the Inspection Regulations, it shall be the duty of the service provider to produce before the IA documents, record, or information in his custody or control and furnish to the IA such statements and information relating to its activities within such time as the IA may require.
- 4.1.3. It is observed that Mr. Partha Sarathy Sarkar has not provided crucial information, documents, requisite details as sought by the IA, which is his duty under regulation 4(4) of the Inspection regulations.
- 4.1.4. In view of the above, the Board is of the *prima facie* view that Mr. Partha Sarathy Sarkar has *inter-alia* violated Section 208(2)(a) and (e) of the Insolvency and Bankruptcy Code, 2016 (Code), Regulation 4(4) and 4(7) of Inspection Regulations, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 18 and 19 of the Code of Conduct as specified in the First Schedule of IP Regulations.

##### **4.2. Submissions of Mr. Partha Sarathy Sarkar**

- 4.2.1. Mr. Partha Sarathy Sarkar submitted that the captioned notice was not specific as to

what were the crucial documents being adverted by the IA. He submitted that in the inspection notice on 17th March 2021, copy of notice, agenda and minutes of meeting of the CoC convened by the IRP and copy of progress reports submitted to NCLT were sought. Mr. Partha Sarathy Sarkar submitted that the said documents were sought during the peak of the second wave of COVID-19 when several restrictions were imposed by the local administration and access to the office was impossible. He stated that the said difficulties were intimated to IA *vide* mail dated 17th March 2021 as in the circumstances, the records in totality could not be provided. He further stated that subsequent to the said communication, no further communication was received from the Board seeking any further documents as was required under Regulation 4 (4) of IBBI (Grievance & Complaint Handling Procedure) and therefore, he has maintained that in totality of circumstances, no violation has been made.

#### **4.3. Summary and Findings**

- 4.3.1. The DC notes that the IA issued notice of inspection under regulation 4 (1) of the Inspection Regulations to Mr. Partha Sarathy Sarkar vide email dated 17.03.2021 to inform him that the IA would be undertaking inspection in respect of assignments handled by him and that all documents pertaining to this assignment may be mailed to the IA on or before 31.03.2021. Mr. Partha Sarathy Sarkar, instead of responding to the notice as mandated under section 218(3) of the Code r/w regulation 4(4) and 4(7) of the Inspection Regulations submitted that the notice dated 17.03.2021 was misleading/defective/vitiated notice/communication and termed the same as non-est/void ab initio. The DC also notes that Mr. Partha Sarathy Sarkar did not submit the requisite documents and even when the DIR was shared with Mr. Partha Sarathy Sarkar, he did not provide his comments or documentary evidence to refute the same.
- 4.3.2. The DC notes that the Inspection Notice and the DIR contain the detailed reasons/findings and Mr. Partha Sarathy Sarkar should have furnished documents/records/information as requested during the inspection. A detailed point-wise response of Mr. Partha Sarathy Sarkar on the DIR was relevant for the purpose of inspection in respect of his assignment of inspection of CD. The IP is also duty bound to provide the requisition documents in Section 218(3) of the Code read with Regulations 4(4), 4(5) and 4(7) of Inspection Regulations. Accordingly, the conduct and response of Mr. Partha Sarathy Sarkar vide his e-mail dated 29.04.2021 is construed as evasive and the absence of response to specific

observations made in the DIR is construed as acceptance of observations of IA. Mr. Partha Sarathy Sarkar has cited Covid-19 as one of the reasons for non-submission of the records, but the same does not hold water as Mr. Partha Sarathy Sarkar could have submitted the relevant documents during the window opportunity as it unfolded from time to time and he was able to get access to his office. Instead of waiting for reminder/further communication from IA, he could have opted to immediately submit reply/documents to IA as soon as it was possible.

#### **4.4. Contravention No. II with regard to delay in making public announcement**

4.4.1. It is observed that AA vide its order dated August 21, 2019 admitted the CD into CIRP. Regulation 6(1) CIRP Regulations specifies that an insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional and the term immediately for the purpose of the aforesaid regulation has been clarified as not later than three days from the date of the appointment of the insolvency professional. However, the public announcement was made by Mr. Partha Sarathy Sarkar only on September 27, 2019. Thus, there is a delay of 33 days in making the public announcement.

4.4.2. In view of the above, the Board is of the prima facie view that Mr. Partha Sarathy Sarkar has inter alia violated Sections 13(2), 15(2), 208(2)(a) and 208(2)(e) of the Code, Regulation 6(1) of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 13 of the Code of Conduct.

#### **4.5. Submissions of Mr. Partha Sarathy Sarkar**

4.5.1. Mr. Partha Sarathy Sarkar stated that it was a matter of record that communication of the order dated 21st Aug 2019 was not received by him from NCLT Registry till 26<sup>th</sup> September 2019. Mr. Partha Sarathy Sarkar submitted that certified copy of the order was communicated by the Advocate of the petitioner on 26th September 2019 and the public announcement was made by him on 27th September, 2019. In view of the same, Mr. Partha Sarathy Sarkar stated that he was not guilty of any violation.

#### **4.6. Summary and Findings**

4.6.1. The DC notes that Mr. Partha Sarathy Sarkar was appointed vide order of AA dated

21.08.2019 and the public announcement was made on 27.09.2019, *i.e.*, after more than a month of ICD. The DC notes the submission of Mr. Partha Sarathy Sarkar that communication of the order dated 21st Aug 2019 was not received by him from NCLT Registry till 26th September 2019. The contention of Mr. Partha Sarathy Sarkar on this count is acceptable and needs to be dropped.

#### **4.7. Contravention no. III with regard to non-appointment of registered valuers**

- 4.7.1. It is observed that AA vide order dated August 21, 2019 appointed Mr. Partha Sarathy Sarkar as IRP. Further, CoC in the 1st meeting dated October 22, 2019 confirmed his appointment as the RP in the CD.
- 4.7.2. Regulation 27 of the CIRP Regulations requires an insolvency professional to appoint two registered valuers within forty-seven days of insolvency commencement date. It is Mr. Partha Sarathy Sarkar's submission to IA that "*the assets of the Corporate Debtor are untraceable as informed by the CoC members to the RP. Moreover, none of the CoC members are willing to contribute towards CIRP cost, hence no Registered Valuers could have been engaged.*". Section 25(2)(d) of the Code casts the duty on an insolvency professional to appoint accountants, legal or other professionals in the manner specified by the Board. The obligation of appointment of registered valuers under Regulation 27 of the CIRP Regulations is on the RP and not the CoC. It is observed that Mr. Partha Sarathy Sarkar failed to appoint registered valuers which is in violation of Regulation 27 of CIRP Regulations.
- 4.7.3. Thus, in view of the above, the Board is of the prima facie view that Mr. Partha Sarathy Sarkar has inter alia violated Section 25(2)(d), 208(2)(a) and 208(2)(e) of the Code, Regulation 27 of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations and Clause 3.5 and 13 of Code of Conduct.

#### **4.8. Submissions of Mr. Partha Sarathy Sarkar**

- 4.8.1. Mr. Partha Sarathy Sarkar submitted that the assets of the CD were untraceable as informed by the CoC members (the erstwhile employees of the CD) & no one was willing to contribute towards the CIRP Cost. He stated that the Code & any Regulation framed therein also does not conceive of any situation, wherein the IRP/RP shells the CIRP Cost out of his own pocket.

#### 4.9. Summary and Findings

4.9.1. The DC notes that no registered valuers have been appointed during the CIRP of the CD. The DC notes the response of Mr. Partha Sarathy Sarkar to the list of documents for inspection stated that *'the assets of the Corporate Debtor are untraceable as informed by the CoC members to the RP. Moreover, none of the CoC members are willing to contribute towards CIRP cost, hence no Registered Valuers could have been engaged.'*

4.9.2. The DC also notes that Mr. Partha Sarathy Sarkar was appointed by the CoC in its first meeting dated 22.10.2019. The obligation of appointment of registered valuers under regulation 27 of the CIRP Regulations is on the RP and not the CoC. However, after appointment, Mr. Partha Sarathy Sarkar did not appoint two registered valuers within 7 days of his appointment. The DC also found that Mr. Partha Sarathy Sarkar has not exhibited any intention by taking some concrete steps that can instill some degree of confidence in the earnestness of the IP. It is plain for anyone willing to see that Mr. Partha Sarathy Sarkar has not done anything to show that he intended to complete the CIRP with required diligence. The logic about non availability of funds being main reason for non-appointment of valuers does not appear to be tenable. In such a situation, Mr. Partha Sarathy Sarkar could have apprised the AA for not pursuing the CIRP as CD has no assets and instead recommendation for liquidation needed to be considered. Continuing with the assignment without following the due processes establishes, willful contravention of procedures provided in the Code. Thus, the DC is of the view that there was a violation of Section 208(2)(a) of the Code and Regulation 27 of the CIRP Regulations.

#### 4.10. Contravention no. IV with regard to inconsistency in the insolvency commencement date

4.10.1. Section 208(2)(a) of the Code specifies that every insolvency professional to take reasonable care and diligence while performing his duties. It was observed that there was inconsistency in the insolvency commencement date (ICD) in the documents filed before AA by Mr. Partha Sarathy Sarkar. ICD in public announcement and in an interlocutory application has been mentioned as September 26, 2019 while in the progress report dated October 31, 2019 filed by him before the AA states that CIRP was admitted on August 21, 2019.



4.10.2. In view of the above, the Board is of the prima facie view that Mr. Partha Sarathy Sarkar has *inter alia* violated Section 208(2)(a) and 208(2)(e) of the Code, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 2 and 12 of the Code of Conduct.

#### 4.11. Submissions of Mr. Partha Sarathy Sarkar

4.11.1. Mr. Partha Sarathy Sarkar submitted that the charge of violation was ex-facie in disregard to the binding precedent as has been settled by Hon'ble NCLAT in Velamur Anand vs. Union Bank of India, 2018 SCC online NCLAT 258, wherein as per the ratio of the ruling the time period till which the IRP was not informed about the order was excluded. As per the Hon'ble Bombay High Court ruling in K.K. Singh V/s Uol & Ors. Writ Petition (L) NO. 3250 OF 2019, which has reiterated Rule 150 of NCLT Rules, an order can be taken cognizance of only when the order or judgment or notice bears the seal of the Tribunal. Mr. Partha Sarathy Sarkar submitted that he is not guilty of any violation.

#### 4.12. Summary and Findings

4.12.1. The DC notes that the ICD is mentioned as 26.09.2019 in the copy of the Public Announcement. Moreover, in some communications of Mr. Partha Sarathy Sarkar with the AA, the ICD has been stated as 26.09.2019. However, in the Progress Report filed by Mr. Partha Sarathy Sarkar, it was mentioned that “*the application for Corporate Insolvency Resolution Process filed by operation creditor Mr. Anil Kheaterpal, under Section 9 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was admitted by Hon’ble NCLT, Delhi vide Order dated 21.08.2019 wherein Mr. Partha Sarathy Sarkar.... was appointed as Interim Resolution Professional (IRP).*”

4.12.2. DC has perused the records available with the Board and found that ICD in Form 7 submitted by him is mentioned as 21.08.2019. In case there was some confusion in this regard, necessary clarificatory application could have been filed by him with the AA.

#### 4.13. Contravention no. V with regard to Timeline Violation of CIRP

4.13.1. Section 12(1) of the Code provides that CIRP shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate CIRP. Further, Section 12(2) of the Code provides that an insolvency professional shall

file an application to AA to extend the period of CIRP beyond one hundred and eighty days on the prior approval from CoC. It is noted that CIRP commenced on August 21, 2019, however, it is observed from the reply of Mr. Partha Sarathy Sarkar to the IA wherein he has stated "*no application for extension of CIRP period has been filed*". Thus, it is noted that no application for extension of CIRP has been filed by Mr. Partha Sarathy Sarkar before AA.

4.13.2. In view of the above, the Board is of the prima facie view that Mr. Partha Sarathy Sarkar has inter alia violated Section 12(1) and (2), Section 208(2)(a) and 208(2)(c) of the Code, Regulation 7(2)(a) and 7(2)(h) of the IP Regulations read with Clause 2 and 12 of Code of Conduct.

#### **4.14. Submissions of Mr. Partha Sarathy Sarkar**

4.14.1. Mr. Partha Sarathy Sarkar submitted that the given the traverse of events qua CIRP of the CD & given the expiry of the CIRP period, appropriate directions have been sought from Hon'ble AA vide IA 1996/2020 which was pending adjudication. Mr. Partha Sarathy Sarkar submitted that the application for extension u/s 12(2) of the Code can be filed only if instructed to do so by CoC by a resolution passed with 66% of the votes. In the absence of any resolution qua the same, there can be no violation.

#### **4.15. Summary and Findings**

4.15.1. The DC notes that the CIRP is still continuing before the AA i.e., beyond the prescribed period of 180 days from the ICD i.e., 21.08.2019. The 180 days period calculated from the date of admission of application came to an end on 17.02.2020. Moreover, there has been no extension of the period of CIRP by the AA. And the period of 330 days provided in the proviso to Section 12 of the Code is also over in the matter. The DC notes that Mr. Partha Sarathy Sarkar has tried to mislead the IA and this authority by submitting in his reply that the application for extension u/s 12(2) of the Code can be filed only if instructed to do so by CoC by a resolution passed with 66% of the votes. Mr. Partha Sarathy Sarkar should have moved agenda in COC for consideration and voting for filing application before AA for seeking extension of CIRP period.

4.15.2. Hence, there is violation of Section 12 of the Code, Regulation 7 (2)(h) of the IP Regulations and Clause 13 of the Code of Conduct provided in the First Schedule to the IP Regulations.

#### **4.16. Contravention no. VI with regard to non-compliance of regulation 21(3) and (4) of the CIRP Regulations**

4.16.1. Regulation 21(3) and (4) of CIRP Regulations specifies that the notice of the meeting shall contain list of matters to be discussed at the meeting, a list of issues to be voted at the meeting, copies of all relevant documents to be discussed and the issues to be voted upon at the meeting, the process and manner for voting by electronic means and time schedule, including time period during which the votes may be casted, the login ID and the details for generating password etc. Vide email dated March 31, 2021, Mr. Partha Sarathy Sarkar provided a few documents and links to the IA. However, he did not provide crucial documents and necessary documents including notices of all CoC meetings, documents evidencing minutes of all CoC meetings were circulated within 48 hours in terms of regulation 24(7) of the CIRP Regulations, minutes of the CoC meetings, e-voting results etc. at the time of inspection to the IA.

4.16.2. It is noted from the notice of the 1<sup>st</sup> CoC meeting dated October 17, 2019 that the notice contained only date, venue and timings of the said meeting. Whereas mandatory details such as (i) list of matters to be discussed at the meeting. (i) list of issues to be voted, (in) the process and manner for voting by electronic means, etc. were not mentioned as required in the notice dated October 17, 2019.

4.16.3. Thus, the Board is of the prima facie view that Mr. Partha Sarathy Sarkar has inter alia violated Section 208(2)(a) and 208(2)(e) of the Code, Regulation 21(3) and (4) of the CIRP Regulations. Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 2 and 12 of the Code of Conduct.

#### **4.17. Submissions of Mr. Partha Sarathy Sarkar**

4.17.1. Mr. Partha Sarathy Sarkar submitted that the 1<sup>st</sup> meeting of the CoC being referred to was conducted in strict conformity to the mandate of Section 22 of the Code and it is nowhere stated that the meeting as specified in Section 22 of the Code is to be conducted in the manner as specified by the Board. He submitted that matters specified in section 240 of the Code to be under the powers of the Board to make regulations has excluded Section 22 of the Code. He stated that the issue made out is in contemptuous disregard of Hon'ble Delhi High Court ruling in Subhash Aggarwal Vs Uol 2011 SCC On Line Del 3033, which relied upon the Hon'ble Supreme Court ruling in State of

Tamil Nadu Vs P. Krishnamurthy, wherein it was ruled that subordinate legislation which does not conform to the Parent Act is invalid and as was ruled by Hon'ble Supreme Court in KS Bhoir Vs State of Maharashtra (2001) 10 SCC 264, there cannot be a direction to disobey laws. Hence, Mr. Partha Sarathy Sarkar submitted that there is no violation on his part in non-compliance of any regulation which is not in conformity to section 240 of the Code.

#### **4.18. Summary and Findings**

- 4.18.1. The DC notes from the Notice of CoC meeting dated 17.10.2019 sent by Mr. Partha Sarathy Sarkar to the CoC members that mandatory details like (i) list of matters to be discussed at the meeting, (ii) list of issues to be voted, etc. were missing from the Notice. Accordingly, The DC is of the opinion that Mr. Partha Sarathy Sarkar has violated section 208(2)(a) and 208(2)(e) of the Code read with Regulation 21(3) and (4) of the CIRP Regulations.
- 4.18.2. Also, the DC notes that Mr. Partha Sarathy Sarkar has not provided IA with evidence to substantiate that the copy of the all the minutes of all the CoC Meetings were circulated within 48 hours of the meeting to the participants of the meeting of the CoC. As Mr. Partha Sarathy Sarkar has not provided the IA with evidence of circulation of minutes of all the CoC Meetings within 48 hours of the meeting to participants of the meetings of the CoC, the DC had drawn adverse inference. From the conduct of Mr. Partha Sarathy Sarkar, it is apparent that he has frustrated the object of the Code and Regulations made thereunder. Thus, Mr. Partha Sarathy Sarkar has violated section 208(2)(a) and 208(2)(e) of the Code read with Regulation 24(7) of the CIRP Regulations.
- 4.18.3. The submission made by Mr. Partha Sarathy Sarkar that section 22 has been excluded from the matters specified in section 240 of the Code, and therefore the regulation is invalid is untenable and shows his impertinence towards the procedures laid down in the provisions and regulations of the Code.
- 4.18.4. The Board is adequately empowered to make regulations under section 196 read with section 240 of the Code, provided that the same should be consistent with the Code and the rules thereunder. Mr. Partha Sarathy Sarkar has conveniently ignored the section 208(2)(e) which obligates an IP to perform his functions in the manner and subject to such conditions as are specified in the Code and Regulations framed

thereunder. In the instant case, it is evident from conduct of Mr. Partha Sarathy Sarkar that he has failed to follow the provisions of the Code and regulations made therein and the contravention is wilful. Thus, the DC is of the opinion that Mr. Partha Sarathy Sarkar is liable for violation of section 208(2)(a) and 208(2)(e) of the Code.

#### **4.19. Contravention no. VII with regard to non-maintenance of list of creditors in terms of regulation 13 of CIRP Regulations**

4.19.1. Regulation 13(1) of the CIRP Regulations requires an IP to maintain a list of creditors specifically including details such as the names of creditors, amount claimed by them, amount of claims admitted and security interest, if any. It is observed from the report certifying constitution of CoC filed before AA that, Mr. Partha Sarathy Sarkar has maintained only name of creditor, profile of creditor and amount of operational debt and have failed to include the amount claimed by the creditors, amount of claim admitted and security interest, if any.

4.19.2. Thus, in view of the above, the Board is of the prima facie view that Mr. Partha Sarathy Sarkar has inter alia violated Section 208(2)(a) and 208(2)(c) of the Code, Regulation 13(1) of the CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 2 and 12 of the Code of Conduct.

#### **4.20. Submissions of Mr. Partha Sarathy Sarkar**

4.20.1. Mr. Partha Sarathy Sarkar submitted that regulation 17(1) of CIRP Regulations nowhere mandates that while filing a report certifying the formation of CoC with the AA, the amount claimed by creditors, amount of claim admitted and any security interest has to be necessarily mentioned and hence, the same was not specified by him. He stated that list of documents for inspection also did not specify that the particulars of the amount claimed by creditors, amount of claim admitted and any security interest was to be necessarily mentioned. That as it only asked for the list of creditors, the same was provided.

#### **4.21. Summary and Findings**

4.21.1. The DC observed from the report certifying constitution of CoC filed before AA by Mr. Partha Sarathy Sarkar that he had maintained only name of creditor, profile of creditor and amount of operational debt and have failed to include the amount claimed by the creditors, amount of claim admitted and security interest, if any. The DC has

observed the conduct of Mr. Partha Sarathy Sarkar and it is evident that he has failed to adhere his obligations and compromised with the explicit provisions of the Code and regulations provided therein. Accordingly, The DC is of the view that since the list was not maintained as provided in the CIRP Regulations, there is violation of Section 208(2)(a) of the Code and Regulation 13(1) of the CIRP Regulations.

#### **4.22. Contravention no. VIII with regard to Control and custody of assets of the CD**

4.22.1. Section 25(1) of the Code mandates an IP to preserve and protect the assets of the CD, including the continued business operations of the CD. It is the duty of the IP in view of Section 25(2)(a) to take immediate custody and control of all the assets of the CD including the business records of the CD. It is observed that Mr. Partha Sarathy Sarkar did not appoint the registered valuers since the assets of the CD were untraceable. However, it is noted from the supplementary forensic audit report dated March 3, 2020, wherein the forensic auditor has mentioned about the details of certain assets received by them from Mr. Partha Sarathy Sarkar. Furthermore, from the minutes of the 3rd CoC meeting, it is observed that Mr. Partha Sarathy Sarkar was aware that certain assets of the CD were lying with one of creditors. Therefore, Mr. Partha Sarathy Sarkar failed to take appropriate control and custody of the assets of the CD.

4.22.2. In view of the above, the Board is of the prima facie view that Mr. Partha Sarathy Sarkar has inter alia violated Section 25(1), Section 25(2)(a), 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 2 and 3 of the Code of Conduct.

#### **4.23. Submissions of Mr. Partha Sarathy Sarkar**

4.23.1. Mr. Partha Sarathy Sarkar further submitted that as the CIRP cost was not paid for, the IRP/RP cannot be expected to be a money-lender to the CIRP. And if Mr. Partha Sarathy Sarkar has to fulfil the duty as per Section 25 of the Code, then the CIRP cost has to be paid as per the mandate of NCLAT ruling in Sajeve Bhushan Deora V/s Axis Bank Ltd. - Company Appeal (AT) (Ins) No.741 of 2019. Mr. Partha Sarathy Sarkar concluded that in the absence of fulfilment of the mandate of the said Hon'ble NCLAT ruling, he was not guilty of any violation of the code.

#### **4.24. Summary and Findings**

4.24.1. The DC notes that Mr. Partha Sarathy Sarkar had issued a legal notice dated 10.10.2019

through Mr. Kauser Hussain to M/s Perfect Accounting and Shared Services Pvt. Ltd. for handing over the books of accounts and documents in respect of CD. Against this, M/s Perfect Accounting and Shared Services Pvt. Ltd. sent a reply vide letter dated October 11, 2019 stating that *‘we are handing over all the documents and records including Common Seal available in our custody today October 11, 2019 to your representative advocate V.S.V.N.D.S Bhanumathi. Detail of documents is enclosed herewith as Annexure I’*. Accordingly, certain documents were shared with Mr. Partha Sarathy Sarkar.

4.24.2. The DC further notes from the perusal of the minutes of the 3<sup>rd</sup> CoC meeting that Mr. Partha Sarathy Sarkar was aware that certain assets of the CD were lying with one of the directors of the CD - Ms. Preetha Nair along with data stored in computers. However, the same was not taken by Mr. Partha Sarathy Sarkar in his custody and control.

4.24.3. Further, Mr. Partha Sarathy Sarkar had disclosed the following fact in his application bearing CA No. 1138(ND)/III/2020:

*“27. The last known value of assets as per the audited financial statements of 31st Mar, 2017 is around INR 8.16 Crores; which are at multiple locations, the CoC be directed to fix the fees/expenses to be incurred in terms of Regulation – 34 of IBBI (Insolvency resolution process for corporate persons) Regulations, 2016...”*

4.24.4. The DC notes the submission of Mr. Partha Sarathy Sarkar that the assets of the CD were not traceable. However, the DC noted that, certain assets like that of furniture were still lying with its director/CoC member Ms. Preetha Nair. The DC notes that in the supplementary audit report dated 03.03.2020, it was stated by the forensic auditor that *“the RP has provided us communications that show that the following assets of ITLD are lying at Villa 20, Tatvam Villas, Sector 48, Sohna Road, Gurgaon – 122018: Printer.... Dell PC + Monitor... Bravia TV... Vacuum Cleaner, Kitchen Utensils..”*. However, it was clarified by Mr. Sarkar, if these assets were in his custody and control.

4.24.5. In view of the above, it is observed that Mr. Partha Sarathy Sarkar had not taken control and custody of the assets of the CD and “did not preserve and protect them” as they were with the COC member Ms Preetha Nair. Accordingly, there is violation of Section 25 (1) and Section 25 (2) of the Code. Further, as Mr. Partha Sarathy Sarkar has not taken reasonable care and diligence while performing his duties of taking control and

custody of assets of the CD, there is also violation of Section 208(2)(a) of the Code.

#### **4.25. Contravention no. IX with regard to non-filing of PUFÉ applications**

4.25.1. It is noted that IA had sought details of records relating to determination on preferential and other transactions covered under Section 43, 45, 50 and 60 under regulation 35A(2) of CIRP Regulation and any action taken thereof. Mr. Partha Sarathy Sarkar in his reply to IA at the time of inspection had submitted that "*No records of any preferential and other transactions are available. No application has been filed with the AA for avoidance of transactions*". However, it is observed from the observation in the report of the forensic auditors dated December 12, 2019 wherein the auditors have noted transactions which could be under the provisions of Section 43, 45, 50 and 66 of the Code. As per the regulation 35A of CIRP Regulations, IP should form an opinion on preferential and other transactions covered under section 43, 45, 50 or 66 of the Code within 75 days of ICD, make a determination within 115 days of ICD and file an application before AA within 135 days of ICD. It is observed from the material available on record that Mr. Partha Sarathy Sarkar has failed to form an opinion and accordingly failed to file the requisite applications before AA for necessary orders.

4.25.2. In view of the above, the Board is of the prima facie view that Mr. Partha Sarathy Sarkar has inter alia violated Section 208(2)(a) and 208(2)(e) of the Code, Regulation 35A of CIRP Regulations, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clauses 3 and 5 of Code of Conduct.

#### **4.26. Submissions of Mr. Partha Sarathy Sarkar**

4.26.1. Mr. Partha Sarathy Sarkar submitted that he could not form any opinion in the absence of adequate material justifying PUFÉ transactions, for which appropriate proceedings were filed vide IA 1138/2020 & IA 1996/2020. Hence, there is no violation.

#### **4.27. Summary and Findings**

4.27.1. The DC notes that Mr. Partha Sarathy Sarkar appointed M/s Shandiliya & Associates as forensic auditors for conducting forensic audit. The report was submitted by the forensic auditor to Mr. Partha Sarathy Sarkar and on perusal of the forensic audit report, it is noted that the report had following observations:

*"Ms. Preetha Nair is cheque issuing authority as also the administrative*



*authority of company”.*

*“The termination and resignation of employee from company has also contributed in stakeholder losses.”*

*“....after rendering services of approx.. 35 month further she has been paid salary of Rs. 3.10 crore approx..”*

*“.... It was found that Preetha Nair being the director of the company and also initial share subscriber of the company, she has been named into various contract on behalf of company with their prospective clients/customer”*

*“The reason of termination of Preetha Nair is not on records, however after being terminated on 12.02.2018, Nair has given her resignation to board of director of ITPL India quoting her resignation as pre-occupation elsewhere (Termination and resignation of Preetha Nair should need more explanation from Board of ITPL)”*

*“All traveling bills are blanketly approved and passed by PReetha Nair without ascertaining reason and outcome of travelling, crores of rupees could not be sanctioned in such casual manner as evident from documents.”*

4.27.2. In view of the above, it is evident that there were transactions which could be under the provisions of Section 43, 45, 50 and 66 of the Code that were conducted with the knowledge of Ms. Preetha Nair, who was also a signatory to the cheques and contracts.

4.27.3. The DC is of the opinion that based on the findings of the Forensic Audit Report and after examination of such transactions, an application should have been made to the AA under Sections 43, 45, 50 and 66 of the Code. However, as this was not done, therefore, the DC is of the view that Mr. Partha Sarathy Sarkar has violated section 43, 45, 50 and 66 of the Code.

## **5. Order**

5.1. In view of the submission made by Mr. Partha Sarathy Sarkar, and materials available on record, DC notes that Mr. Partha Sarathy Sarkar has conducted the entire CIRP of the CD in a brazen manner without having due regard the provisions of the Code and the regulations made thereunder. Accordingly, the DC find that the actions of Mr. Partha Sarathy Sarkar as the IRP of the CD are in violation section 12(1), section 12(2), section 25(1), section

25(2)(a), section 25(2) (d), section 208(2)(a), 208(2) (e) of the Code, Regulation 13(1), Regulation 21(3) and (4), Regulation 27, Regulation 35A of the CIRP Regulations, Regulation 4(4), Regulation 4(7) of Inspection Regulation, Regulation 7(2)(a) and 7(2)(h) of IP Regulations read with Clause 2, 3, 5, 12, 13, 18, 19 of the Code of Conduct specified thereunder. The DC, hereby, considering contravention mentioned hereinabove, suspends the registration of Mr. Partha Sarathy Sarkar as Insolvency Professional, having Registration No. IBBI/IPA-002/IP-N00239/2017-2018/10690 for a period of three years.

- 5.2. The Order shall come into force on expiry of 30 days from the date of its issue.
- 5.3. A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Partha Sarathy Sarkar is providing his services, if any. The CoC may decide whether to continue his services or not. In case, CoC decide to discontinue his services, CoC may file an appropriate application before AA.
- 5.4. A copy of this order shall be forwarded to the ICSI Institute of Insolvency Professionals (ICSI-IIP) where Mr. Partha Sarathy Sarkar is enrolled as a member.
- 5.5. 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.

Accordingly, the show cause notice is disposed of.

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(Sudhaker Shukla)

Whole Time Member, IBBI

Dated:24<sup>th</sup> June, 2022

Place: New Delhi