

**INSOLVENCY AND BANKRUPTCY BOARD OF INDIA
(Disciplinary Committee)**

No. IBBI/DC/145/2023

25th January, 2023

ORDER

In the matter of Mr. Rajagurusami Maheswaran, Insolvency Professional (IP) under Section 220 of the Insolvency and Bankruptcy Code, 2016 read with Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 and Regulation 13 of the Insolvency and Bankruptcy Board of India (Inspection and Investigation) Regulations, 2017.

This Order disposes of the Show Cause Notice (SCN) No. IBBI/IP/INSP/2022/157/4052 dated 19th September, 2022, issued to Mr. Rajagurusami Maheswaran, IIA/GF, Dee Cee Victoria Apartment, 78-1, East Lokamanya Street, R.S.Puram, Coimbatore, Tamil Nadu-641002 who is a Professional Member of the Indian Institute of Insolvency Professional of ICAI and an Insolvency Professional registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00584/2017-2018/11025.

Background

- 1.1 Mr. Rajagurusami Maheswaran, IP was appointed as interim resolution professional (IRP) in the corporate insolvency resolution process (CIRP) in the matter of Sandhhya Shipping Services Private Limited (CD). The National Company Law Tribunal, Chennai Bench (AA) vide Order dated 14.03.2019 had admitted the application under Section 9 of the Code for CIRP of CD. However, settlement was reached between applicant and suspended management and AA vide order dated 3.05.2021 ordered withdrawal of CIRP.
- 1.2 In exercise of its power under section 218 of the Code read with the IBBI (Inspection and Investigation) Regulations, 2017, the IBBI vide Order dated 25.04.2022 appointed an Inspecting Authority (IA) to conduct an inspection of Mr. Maheswaran. IA shared the Draft Inspection Report (DIR) to the IP for his comments on 28.06.2022. The IP provided his comments to DIR vide e-mail dated 20.07.2022. Thereafter the IA submitted the Inspection Report on 26.07.2022.
- 1.3 The IBBI on 19th September 2022 had issued the SCN to Mr. Maheswaran, based on findings in the inspection report in respect of his role as IRP in the CIRP of CD. The SCN alleged contraventions of provisions of the Insolvency and Bankruptcy Code, 2016 (Code), the IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) and the Code of Conduct under regulation 7(2) thereof. Mr. Maheswaran replied to the SCN vide email dated 03.10.2022.

- 1.4 The IBBI referred the SCN, the response of Mr. Maheswaran to the SCN and other material available on record to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Maheswaran availed an opportunity of personal hearing before the DC on 6th January, 2023, wherein he reiterated the submissions made in his written reply.

2. **Alleged contraventions, submissions, analysis, and findings.**

Contraventions alleged in the SCN and Mr. Rajagurusami Maheswaran's submissions thereof are summarized below:

2.1 **Contravention**

Non-action on the part of IRP

- 2.1.1 It is noted that an application was filed before AA by Trane Asian Shipping Services Pvt. Ltd. (Operational Creditor/ OC) under section 9 of the Code for initiation of CIRP of CD. The AA passed an order for initiation of CIRP against the CD, vide Order dated 14.03.2019 and appointed Mr. Maheswaran as an IRP. In the said order, OC and Registry were directed by AA to send a copy of the order to Mr. Maheswaran through e-mail. Mr. Maheswaran's e-mail ID were also mentioned in the order.
- 2.1.2 It is further noted that Mr. Maheswaran had filed an application for extension of CIRP and exclusion of period of 275 days before AA stating that the above stated order was not communicated to him by the OC. Mr. Maheswaran further submitted that the e-mail sent on 19.03.2019 by the Registry of AA had got itself lodged in the "SPAM Folder of Mail Box" in his e-mail and in the circumstances effectively he was not aware of his appointment and hence the CIRP period of "275 Days" is required to be excluded commencing from 19.03.2019 until 13.12.2019 from the CIRP of the CD.
- 2.1.3 However, AA did not accept the argument and vide order dated 9.03.2020 held the following:

"...The communication it is seen was made only on 27.11.2019 and all the above facts points out to an all around dereliction of duty and are absolute negligence on the part of the Operational Creditor and as well as the IRP. The Operational Creditor in its own interest and acting on behalf of the other creditors, the CIRP being a proceeding in rem had to communicate the same to the IRP/Applicant for proceeding with the 'CIRP' which has not been done in this case..."

.... if any dereliction of the duties on the part of the IRP only IBBI can initiate action on the IRP and in the circumstance we deem it appropriate in this matter to transmit the records to the IBBI by the Registry and the IBBI to initiate suitable action as may be

deemed appropriate...”

2.1.4 It is also observed that the AA has not accepted Mr. Maheswaran’s pleading that there has been no dereliction and no fault on his part. Mr. Maheswaran prayed before the AA to expunge the remarks of "dereliction of duty and absolute negligence" made against him in Order dated 9.03.2020.

2.1.5 However, AA vide order dated 3.05.2021 had rejected the arguments raised by him and held *inter alia* as under:

“...In the present case we are concerned with the casual manner in which be it the Applicant or the parties to the main CP, have dealt with the Order passed by this Tribunal on 14.03.2019 and by their respective attitude thereby subverting the said Order and the procedure laid down under the IBC, 2016 all of which does not behave well in relation to its implementation which this Tribunal is compelled to take note of...

... ..the Registry of this Tribunal had also duly communicated the same to e-mail id of the Applicant on 19.03.2019. Hence, there is no scope for the invocation of the maxim as sought to be relied on, as the facts herein only points out to the absolute negligence on the part of the Applicant to thoroughly verify his e-mail which had resulted in the 'dereliction of duty' on his part as enjoined by the provisions of IBC, 2016 ...”

2.1.6 Mr. Maheswaran’s submission before AA as well as to the Board makes it clear that the order dated 14.03.2019 vide which CD was admitted to CIRP and he was appointed as IRP was duly communicated by the Registry of AA to him on his e-mail ID on 19.03.2019. His reply that the said e-mail resided in Spam folder of his e-mail account cannot be considered as a valid justification as the order has been communicated to him on his registered mail account and as such, he is duty bound to check his mail boxes, including Spam, to ensure that no relevant communication is missed out. The delay caused in the said matter is excessive and cannot be ignored as by not taking control of CD for 275 days, he has allowed the CD to be run by the suspended management and therefore acted against the objective of the Code.

2.1.7 In view of the above, the Board held the *prima facie* view that Mr. Maheswaran has, *inter alia*, violated Section 17, 18, 20, 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, 3, 13 and 14 of the Code of Conduct.

2.2 Submissions made by the IP

2.2.1 Mr. Maheswaran submitted that it is a matter of record that the CIRP commenced on 14.03.2019 and he was appointed as the IRP from the date of commencement of CIRP. However, Mr. Maheswaran was unaware of the fact that he was appointed as an IRP until 27.11.2019, when for the first time he got information from advocate of CD about his appointment as IRP.

2.2.2 The following table has been provided for ease of reference of dates:

Date	Events
14.03.2019	Commencement of CIRP
19.03.2019	Communication of appointment of IRP through mail by Registry.
27.11.2019	Actual knowledge of appointment by IRP
09.03.2020	IA filed by IRP for exclusion of days
03.05.2021	IA filed by IRP for withdrawal and to expunge the remark about the IRP
09.12.2021	Reply to IBBI, Grievances and Handling Procedure Team
28.06.2022	DIR was sent by IBBI through email
12.07.2022	Reply letter by IRP to IBBI for the DIR
19.09.2022	Show Cause Notice by IBBI

- 2.2.3 Mr. Maheswaran submitted that the mail sent by the Registry was received in his Spam folder and as a result he was unaware that he had been appointed as an IRP in this matter. The moment Mr. Maheswaran came to know that such a mail had gone unnoticed, he filed an interim application supported by an affidavit dated 13.12.2019 praying for exclusion of days and extension of CIRP stating that the order of CIRP was not communicated at the earliest and that the email had got itself lodged in the “SPAM Folder of Mail Box”.
- 2.2.4 Immediately upon coming to know of the faux pas, Mr. Maheswaran immediately applied for the certified true copy of the order, by then the maximum period allowed for CIRP had ended. The most important point is that both the CD and the OC were before the AA and neither of them had even once contacted Mr. Maheswaran even though the order 14.03.2019 contained his email address. Even if they had wanted to contact, the order does not contain phone number and full address. Secondly, it is matter of fact that the Registry also did not contact him whereas it has been their practice at the registry to communicate. In the mean time, since the amount involved is only Rs. 5,73,423, the parties had settled the matter and the AA has allowed the settlement and withdrawn the CIRP.
- 2.2.5 Mr. Maheswaran further submitted that the AA did not agree that the mail under which the AA had communicated the order had gone into a spam folder and relied on a decision of the Hon’ble Delhi High Court which pertains to a highly competitive bid and no parallel can be drawn between the cases. However, Mr. Maheswaran did not choose to appeal before the Appellate Tribunal against this order because he already had moved the NCLAT, and the AA had passed the instant order dated 03.05.2021 after taking note of the observations of the NCLAT.

- 2.2.6 Another important point in this regard is that the OC was directed to pay Rs.10,000 to PM CARES FUND and it is stated by the AA that the OC who moved the original petition under Section 9 had failed to communicate to the IRP about the appointment and commencement of CIRP. Therefore, while Mr. Maheswaran's omission to be cautious and careful in checking his spam folder also could be a matter of negligence, there are several other circumstantial and connected factors contributed collectively to the situation.
- 2.2.7 Mr. Maheswaran submitted that previously he had not been appointed as an RP and if there has been any such previous experience that would have helped. Mr. Maheswaran also states that he understands that he could have acted diligently, but there is no dishonesty or any other malicious reason or any omission on account of any *mala fide*.
- 2.2.8 In the above facts and circumstances, Mr. Maheswaran expressed his unconditional apology and prays to for pardoning and taking a lenient view considering into account his undertaking that he shall carry out his duties more diligently and carefully.

2.3 Findings

- 2.3.1 The section 17 of the Code confers duty on the IRP to manage the affairs of the CD in its charge as follows:
"17. Management of affairs of corporate debtor by interim resolution professional. –
(1) From the date of appointment of the interim resolution professional, -
(a) the management of the affairs of the corporate debtor shall vest in the interim resolution professional..."
- 2.3.2 The section 18 of the Code also reiterates the responsibility of the IRP to manage the operations of the CD until an RP is appointed as follows:
"18. Duties of interim resolution professional. –
...(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;..."
- 2.3.3 The section 20 of the Code also provides that the IRP is to manage the CD as a going concern as follows:
"20. Management of operations of corporate debtor as going concern. –
(1) The interim resolution professional shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern..."
- 2.3.4 In the present matter, the DC observes that the AA had admitted the CIRP of the CD on 14.03.2019 and appointed Mr. Maheswaran as IRP and *vide* the same order directed both the OC and the AA's Registry to send the copy of the Order to the IRP at the registered e-mail ID of Mr. Maheswaran cited in the Order itself. However, Mr. Maheswaran submits that he was unable to timely find the e-mail service of the order dated 14.03.2019 as the

same went to his spam folder. He became aware of the order only on 27.11.2019, and after a period of 275 days on 13.12.2019, he filed an application for exclusion and extension of the CIRP proceedings.

- 2.3.5 The DC further notes that the AA in its order dated 09.03.2020 in this regard made the observation that “...all the above facts points out to an all around dereliction of duty and absolute negligence on the part of the Operational Creditor and as well as the IRP”. On request by Mr. Maheswaran to expunge the remarks in the order, the AA again reiterated the same observations in its order dated 03.05.2021 while allowing withdrawal of the CIRP due to settlement between the CD and the OC.
- 2.3.6 In view of the foregoing, the DC notes that as per the ‘Insolvency Professionals to act as Interim Resolution Professionals, Liquidators, Resolution Professionals and Bankruptcy Trustees (Recommendation) Guidelines, 2022’ the Board prepares a Panel of IPs which is shared with the AA for selecting names for appointment as Interim Resolution Professional/Resolution Professional/Liquidator/Bankruptcy trustee under the Code. The criteria for inclusion of name is, *inter alia*, if the IP expresses his interest to be included in the panel, undertakes to discharge the responsibility as may be appointed and that he also holds a valid Authorisation for Assignment (AFA). The IP is also required to furnish a registered e-mail wherein he may be contacted and having furnished a valid and registered e-mail, the IP is duty bound to keep on checking his email including the spam folder of e-mail. Therefore, Mr. Maheswaran cannot take the plea that since e-mail sent by registry of AA landed in his spam folder of e-mail and he did not get intimation about his appointment as IRP by AA. It is a reasonable professional expectation from an IP to be more vigilant, cautious and alert in discharge of his duties and verify and check the communications sent to him. Thus, the submission of Mr. Maheshwaran, that the email had got itself lodged in the spam folder, does not hold good. Hence, there is a contravention of sections 17, 18, 20, 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, 3, 13 and 14 of the Code of Conduct.
- 2.3.7 The DC, however, notes that the matter is settled between the parties and the AA has allowed the application for withdrawal filed under section 12A of the Code *vide* order dated 03.05.2021. The DC also takes note of the unconditional apology tendered by Mr. Maheswaran during his oral and written submissions and his assurances that he will carry out his duties more diligently and carefully. The DC also notes his request for taking a lenient view in the matter.

3. Order

- 3.1 In view of the forgoing discussion, the Disciplinary Committee, in exercise of the powers conferred under Section 220 of the Code read with Regulation 11 of the IBBI (Insolvency

Professionals) Regulations, 2016 and Regulation 13 of IBBI (Inspection and Investigation) Regulations, 2017, disposes of the SCN cautioning the IP, Mr. Rajagurusami Maheswaran to be more careful in future and directs him to strictly comply with the applicable provisions of the Code and its underlying Regulations while performing his duties.

- 3.2 The Order shall come into effect immediately in view of para 3.1 of the order.
- 3.3 A copy of this order shall be sent to the CoC of all the Corporate Debtors in which Mr. Rajagurusami Maheswaran is providing his services, if any.
- 3.4 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Rajagurusami Maheswaran is enrolled as a member.
- 3.5 A copy of this order shall also be forwarded to the Registrar of the Principal Bench of National Company Law Tribunal, New Delhi, for information.
- 3.6 Accordingly, the show cause notice is disposed of.

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(Shri Jayanti Prasad)
Whole Time Member, IBBI

Dated: 25th January, 2023
Place: New Delhi