



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI

MA(IBC)/17/KOB/2022

IN

MA. NO. 08/KOB/2022

MA(IBC)/35/KOB/2021

IN

IA(IBC)/13/KOB/2021

IN

TIBA/11/KOB/2019

(Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Bijoy P. Pulipra, Monitoring Agent, Monitoring Committee of PVS Memorial Hospital Private Limited, No. XXIV/1484, Kaloore, Ernakulam, Kerala- 682 017. Having Office Address at: Ground Floor TC-11/789(1), Plamoodu-Nalanda Junction Road, Nathancode, Kowdiar P.O., Kerala- 695 003. Email: info@artish.com.

...Applicant

-Versus-

Deputy Chief Engineer, Kerala Water Authority, Central Region, Kerala Water Authority, Hospital Road, Kochi, Kerala- 682 035. Email: kwacentralregion@gmail.com.

... Respondent

In the matter of:

Dr. N.P.Kamalesh

... Operational Creditor

-Versus-

PVS Memorial Hospital Private Ltd.

... Corporate Debtor

Coram:

Shri. P. Mohan Raj : Member (Judicial)

Shri. Satya Ranjan Prasad : Member (Technical)

Parties / Counsel present (through video conference):

For Applicant in Person : Mr. Bijoy Prabhakaran Pulipra,
Advocate.

For Respondent : Mrs. Rekha K.B., Advocate.



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In re: Dr. N.P.Kamalesh Vs. PVS Memorial Hospital Private Ltd.

Order reserved on: 07.12.2022
Order pronounced on:10.02.2023

ORDER

1. The applicant has filed this application with the following prayer:

To permit the monitoring Agent /Monitoring committee pay an amount in accordance with clauses 5.1.21 and clauses 5.1.18.3 of the Approved resolution Plan i.e. a maximum amount of Rs.28,662/- as final payment to the respondent and note complete compliance in terms of Approved resolution plan towards the same.

2. It is regretful that the applicant is an Advocate appointed as Monitoring Agent of corporate debtor PVS Memorial Hospital Private Limited coined the prayer to circumvent the situation and mislead the Adjudicating Authority, but in pith and substance this is an application filed to recall the order clause (iii) in para 28 of the order dated 24.02.2022 passed in M.A.No.35/KOB/2021 against the respondent in this petition i.e., Kerala water Authority.
3. This application is to be considered as in continuation of M.A.No.8/KOB/2022 and M.A.NO.35/KOB/2021.

The brief background of the case necessary to dispose of this application are as follows:

4. The CIRP was initiated against the corporate debtor M/s PVS Memorial Hospital Private Limited in TIBA/11/KOB/2019 by an on order of this Adjudicating Authority dated 16.10.2019. The applicant herein was appointed as IRP later appointed as RP. The resolution plan IA(IBC)13/KOB/2021 submitted by M/s Lissie Medical Institution for Rs.126,00,00,000/-was approved by this Adjudicating Authority on



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MA.No. 08/KOB/2022
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IN
TIBA/11/KOB/2019

In re: Dr. N.P.Kamalesh Vs. PVS Memorial Hospital Private Ltd.

22.02.2021. The applicant is appointed as the Monitoring Agent. During the CIRP the respondent Kerala Water Authority submitted a claim in Form B for Rs.16,10,79,287/- which includes the water charges as well as penalty. After verification of claim of Rs.16,10,79,287/- a claim amount of Rs.15,90,71,726/- was rejected by the RP for want of supporting document and remaining amount of Rs.20,07,561/- was provisionally admitted. In the resolution plan the provisionally admitted claim amount Rs.20,07,561/- was not included. In short no provision is made in the resolution plan for payment of Rs.20,07,561/- to the respondent. In the Resolution plan amount out of Rs.126,00,00,000/- as per distribution schedule a sum of Rs.125,00,00,000/- were distributed in accordance with section 53 of IBC 2016. A sum of Rs.1,00,00,000/- is allotted exclusively for the payment of debts of the operational creditors and unsecured financial creditors. In the resolution plan no provision is made for the payment of Rs.20,07,561/- to the respondent, the said debts was declared as extinguished in the approved resolution plan.

5. The applicant filed M.A.No.,35/KOB/2021 against five respondents, the respondent herein is arrayed as 5th respondent for certain reliefs. The prayer made against the respondent herein in M.A.No.35/KOB/2021 is as follows:

(d) Issue direction to Kerala Water Authority to reinstate the water supply to the premises of M/s PVS Memorial Hospital Private Limited, Kaloor, Kochi and adhere to the terms of the Resolution Plan approved by this Tribunal.

6. When this Adjudicating Authority disposing of M.A.No.35/KOB/2021 on 24.02.2022 granted a prayer against the respondent herein in para 28(iii) as follows:



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MA(IBC)/17/KOB/2022
IN
MA.No. 08/KOB/2022
MA(IBC)/35/KOB/2021
IN
IA(IBC)/13/KOB/2021
IN
TIBA/11/KOB/2019

In re: Dr. N.P.Kamalesh Vs. PVS Memorial Hospital Private Ltd.

(iii) The Kerala water Authority is directed to restore the water connection of the corporate debtor, if the successful Resolution applicant files proper application before them. The Monitoring Agent is directed to release the payment of Rs.20,07,561/- already approved by the Resolution Professional to the Kerala Water Authority without fail.

7. The fact is that the Resolution professional provisionally admitted the claim of the respondent to the extent of Rs.20,07,561/- It is reiterated by this Adjudicating Authority in para 25 of the order dated 24.02.2022 passed in M.A.No.35/KOB/2021. However, no provision is made in the approved resolution plan to pay any amount to the respondent, without making any provision in the resolution plan no amount can be disbursed. Further, the applicant stated that out of Rs.126,00,00,000/- resolution amount Rs.125,00,00,000/- has been already disbursed in accordance with plan. In the remaining Rs.1,00,00,000/- amount provided for payment unsecured financial creditor and operational creditors out of which the respondent is eligible only to the extent of Rs. 28,662/-
8. Thus, the order dated 24.02.2022 passed in M.A.No.35/KOB/2021 is not in consonance with the approved resolution plan. The direction given by this authority against the applicant /Agent of monitoring committee could not be complied with/inexecutable, when there is no fund and no provision is made in the approved plan the direction issued cannot be carried out. This Authority also observed in para 27 of order passed in M.A. No,35/KOB/2021 as follows:

27. To sum up, after analysing the issue framed, we are of the opinion that the claims which are raised by various statutory authorities and other creditors after the approval of Resolution Plans, cannot be accepted by the Adjudicating Authority, as the claims which are not



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In re: Dr. N.P.Kamalesh Vs. PVS Memorial Hospital Private Ltd.

included in the Resolution Plan cannot be raised before any forum and thus, the creditor are barred to raise any claim accruing prior to the transfer of the Corporate debtor to the Successful Resolution Applicant, the intent being settlement and resolution of debts at a single stroke, as the approved Resolution Plan is binding on all parties and no further claims can be raised against the corporate debtor by virtue of Section 30 read with Section 31 of the Insolvency and Bankruptcy Code, 2016.

The above factors reveal that a mistake was crept in the order dated 24.02.2022 passed in M.A.No.35/KOB/2021 inadvertently.

9. The next point is whether the order passed by mistake can be recalled. On the respondent side argued that since there is no clerical or arithmetical error under Rule 154 of NCLT Rules 2016 the mistake cannot be rectified. In fact, Rule 154 of NCLT Rules not only speaks about clerical and arithmetical error but also deals with rectification of error arose from any accidental slip. Further it is true that this Adjudicating Authority has no review power, but here this Authority is not intend to review the order passed by this authority but wants to rectify some mistake crept in the proceeding, it is obvious in the order dated 24.02.2022 this Authority observed and given finding in para 27 supra that as the claims which are not included in the Resolution plan cannot be raised, but while granting the relief this Authority might be under the impression that claim is included in the plan passed the order. The undisputed fact is respondent's claim is not included in the approved plan. When the result portion is not in accordance with the finding arrived in the order it is only a mistake it can be cured, it will not amount to reviewing the order. The Hon'ble NCLAT-Chennai in Mr. Shahi Md. Karim vs M/s.Kabamy India LLP and another C.A. No.16 of 2023 dated 25.01.2023 held that though the Adjudicating Authority does not have the power to



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MA(IBC)/17/KOB/2022
IN
MA.No. 08/KOB/2022
MA(IBC)/35/KOB/2021
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IA(IBC)/13/KOB/2021
IN
TIBA/11/KOB/2019

In re: Dr. N.P.Kamalesh Vs. PVS Memorial Hospital Private Ltd.

Review, it can be based on the facts and circumstances of the case. Recall the Order. Section 420(2) of the Companies Act 2013 speaks about the rectification of mistake apparent on the records. The mistake means wrong, error or fault and apparent means visible, obvious or easily seen. A mistake which can be rectified is one which is patent, obvious and whose discovery is not dependent on argument. A mistake appeared apparent means, there will not be any argument supporting the mistake is correct. If the order is apparently incorrect, it means the mistake is in such a nature it cannot be denied by other side. So, the mistake in apparent can be rectified. The inherent power can be used by the Tribunal to keep its records in order.

10. On the respondent side filed counter raising the plea of resjudicata, here this Authority not intending to pass again any order deciding the rights of the parties but wants to put the order in a manner inconsonance with the findings in the order. In the detailed counter the respondent unfortunately questioned the correctness of the rejection of its claim by the Resolution Professional and claims that the respondent is entitled to recover the amount which is due pertaining to the pre-CIRP period even after the approval of resolution plan, ignoring the law laid down by Apex court in Ghanashyam Mishra and sons (2021 SCC Online SC 313).
11. On the respondent side failed to answer how the respondent is entitled to the amount of Rs.20,07,561/- in the absence any provision made in the resolution plan and how the successful Resolution applicant is liable to pay the said amount since the due amount prior to the CIRP period is extinguished. On the respondent side filed the reply and argued the matter as if this is an appeal preferred under section 42 of IBC 2016.
12. On the respondent side also stated that in view of dismissal of M.A. No. 8/KOB/2022 this application is not maintainable. After the order passed in



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IN
MA.No. 08/KOB/2022
MA(IBC)/35/KOB/2021
IN
IA(IBC)/13/KOB/2021
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TIBA/11/KOB/2019

In re: Dr. N.P.Kamalesh Vs. PVS Memorial Hospital Private Ltd.

M.A.No.35/KOB/2021 the applicant filed an M.A.No.8/KOB/2022 under Rule 154 of NCLT Rules 2016 to rectify the apparent mistake in para 28(iii) of the order dated 24.02.2022 passed in M.A.No.35/KOB/2021. In M.A.No.8/KOB/2022, the respondent filed detailed counter claiming entire due amount from the corporate debtor, to the said reply the applicant not filed any rejoinder, observing this the rectification application was dismissed by this Authority on 20.04. 2022. The applicant preferred Company Appeal (AT)(Ins) No.240/2022 before NCLAT-Chennai, the said appeal was dismissed on 20.07.2022 granting liberty to the applicant to seek any other remedy available in law. The applicant filed this application in view of the liberty granted by the NCLAT, hence this application cannot be dismissed simply as required by the respondent only because of dismissal of previous application M.A.No.8/ KOB /2022.

13. The applicant in para 1.12 application stated that the respondent is eligible for a sum of Rs.28,662/- towards amount payable to the respondent out of Rs.1,00,00,000/- allotted for entire operational creditors and the unsecured financial creditors. In prayer also the applicant sought permission to pay the said amount Rs.28,662/- as final payment to the respondent.
14. The fact is that if para (iii) 28 of the order passed in M.A.No.35/KOB/2021 is not recalled the proceedings cannot be completed. When there is no provision in the approved resolution plan for payment to the respondent the direction given in para 28(iii) of the order passed in M.A.No.35/KOB/2021 cannot be complied/executed, it leads to piquant situation, hence to avoid further complication and give quietus to the issue it is just and necessary to recall the para 28(iii) of the order passed in M.A.No.35/KOB/2021 dated 24.02.2022 and substitute it with suitable and correct order.



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

MA(IBC)/17/KOB/2022
IN
MA.No. 08/KOB/2022
MA(IBC)/35/KOB/2021
IN
IA(IBC)/13/KOB/2021
IN
TIBA/11/KOB/2019

In re: Dr. N.P.Kamalesh Vs. PVS Memorial Hospital Private Ltd.

In the result this application is ordered as follows:

- (i) The para 28 (iii) of order dated 24.02.2022 passed in M.A.No.35/KOB/2021 is hereby recalled and substituted with the following order:

“The Kerala Water Authority is directed to restore/give water connection of the corporate debtor, if the successful Resolution Applicant M/s Lissie Medical Institution or any other person on its behalf, files an application for water connection/restoration without insisting to make any payment/arrears in whatever nature payable by the corporate debtor prior to the approval of resolution plan dated 22.02.2021. The applicant Monitoring Agent of corporate debtor is permitted to pay a sum of Rs.28,662/- (Rupees twenty eight thousand six hundred and sixty two only) to the Respondent, Kerala Water Authority within fortnight from the date of this order as final payment”.

Thus, this application is ordered and disposed of, No cost.

15. Registry is directed to communicate this order to the respective parties through email.
16. Certified copy of the order be issued on request of the parties as per the procedure.
17. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.02.10 15:59:42 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.02.10 14:33:03 +05'30'
RAJ

P. Mohan Raj
Member (Judicial)

Signed on this 10th day of February, 2023.

Supriya.P_S.