

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH, KOCHI

IA(IBC)/106(KOB)/2022

IN

CP (IB) /05 (KOB)/2021  
(Under Rule 11 of the NCLT Rules, 2016)

**Order delivered on: 01.07.2022**

Coram:

**Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)**  
**Hon'ble Mr. Anil Kumar. B, Member (Technical)**

K Parameswaran nair  
Resolution Professional  
Samson and Sons Builders and Developers Private Limited  
37/1736E, Kripasagaram  
K. Murali Road, Kadavanthara  
Ernakulam, Kerala- 682 020

... **Applicant**

**In the matter of**

Vijayakumar J  
V. J Constructions,  
Thattankonam, Edaicode,  
Kanniyakumari District. – 682 020

... **Operational Creditor**

Versus

Samson and Sons Builders and Developers Private Limited,  
TC 3/678  
Kannimattom, Muttada P O  
Interalia a branch at Edapally Toll  
Trivandrum – 695 025.

... **Corporate Debtor**

**Parties/Counsel present (through video conference)**

For Applicants

... INDIALAW LLP

**ORDER**

**Per: Ashok Kumar Borah, Member (J)**

1. This IA(IBC)/106 (KOB)/2022 has been filed under Rule 11 of the NCLT Rules, 2016 by K Parameswaran Nair, Resolution Professional of the Corporate Debtor - Samson and Sons Builders and Developers Private Limited seeking the relief to pass an order excluding the period of 139 days ie., 10 days from 03.11.2021 to 12.11.2021, 72 days ie., from 10.01.2022 to 23.03.2022 and another 57 days on account of non-completion of the CIR Process during the IRP Period from the period of Corporate Insolvency Resolution Process of the Corporate Debtor.
2. The applicant stated that this Tribunal vide order dated 03.11.2021 in CP(IB)/05/KOB/2021, admitted the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by Vijayakumaran J, against the Corporate Debtor and appointed Mr. Muhammed Davood Cmk having Registration No. IBBI/IPA-001 /IP-P02357 20202021/13499 as the Interim Resolution Professional from the Panel of IPs.
3. It is further stated that Mr. Muhammed Davood Cmk vide letter dated 07.11.2021 informed the Registry about his inability to continue as IRP due to his poor health and hence vide order dated 09.11.2022, this Tribunal replaced the IRP with Mr. Lukose Joseph as an IRP from the panel of IPs.
4. Learned counsel for the Resolution Professional stated that the IRP made a public announcement inviting claims on 15.11.2021 in Form -A in two newspapers namely Deshabhimani and Business Line and an addendum to the paper publication on 21.11.2021 and 22.11.2021 with the name of representatives for Home Buyers class of Creditors.

5. It is further stated that the first meeting of COC was convened on 23.12.2021. In the Second Meeting of COC held on 10.01.2022, IRP Mr. Lukose Joseph expressed his unwillingness to continue as RP. In the said meeting the Class of Creditors (Home Buyers and Deposit Holders) proposed the name of Mr.K. Parameswaran Nair as the RP. The proposal for the appointment of RP was approved by COC with 68.47% voting. Pursuant to the decision of the CoC, IRP filed an application for a change of IRP to RP on 21.01.2022 and this Tribunal appointed Mr. K. Parameswam Nair as the RP vide order in IA(IBC)/ 14/KOB/2022 on 16.03.2022. Since the IRP was replaced by CoC on 10.01.2022 and there was no RP in existence till the appointment of RP by this Tribunal and until receipt of the order by the RP, the CIRP activities could not be carried out during the said period.
6. The applicant stated that the IRP has handed over the soft copy of claims form and creditors list on 23.03.2022, however, the physical copy of the same were handed over only on 23.04.2022. It is also stated that RP took over the charge after the 140<sup>th</sup> day of CIRP, and found that following procedures were either pending or not carried out with respect to the CIRP of the Corporate Debtor:
- a. Complete verification of Claims with reference to books of Accounts etc, pending due to lack of records.
  - b. Appointment of Registered valuers for Land and Building, Plant & Machinery and Securities and Financial Assets. under Regulation 27, the valuers are to be appointed within 7 days of appointment of RP but not later than 47<sup>th</sup> day of commencement
  - c. Preparation of Information Memorandum. RP is required to prepare the IM not later than 54<sup>th</sup> days of commencement under Regulation 36(1).

- d. To form an opinion on PUF (Preferential, Undervalued, Fraudulent and Extortionate transactions) U/S 43, 45, 50 and 66 of IBC and determination of PUF under intimation to IBBI and to file application to AA for appropriate relief. Under Regulation 35A, RP is required to make opinion on preferential and other transaction within 75 days and determination within 15 days and RP to file application before the Adjudicating Authority before 135 days.
  - e. Invitation for Expression of Interest from Prospective Resolution Applicant and finalisation of criteria for prospective resolution applicants.
  - f. Appointments of Accountants, Auditors, Lawyers, and other Professionals
  - g. To ascertain the estimated CIRP cost and to raise interim finance to keep the CD as a going concern, which includes raising Interim Finance and raise the Debit Note to all Financial Creditors to contribute proportionally to their share of CIRP cost.
  - h. Submission /filing of CIRP 2 to-CIRP 8 Forms.
  - i. Calling AGM and Filing of RoC and MCA returns on finalization of Accounts and Audit thereof.
7. It is further stated that the RP has convened a meeting of CoC on 20.04.2022 and the CoC considered the aspect that many of the activities, which were to be carried out as per the timeline prescribed under the Regulation and Insolvency and Bankruptcy Code were not carried out prior to the appointment of the Applicant as Resolution Professional. Therefore, without the exclusion of those period including the delay in appointment of RP, the CIRP cannot be effectively completed within the statutory timeline. Hence, the CoC resolved to seek exclusion of 139 days out of the total 169 days completed as on 15.04.2022 and resolved to seek extension of upto

330 days to complete the CIRP in view of the pending actions. CoC approved the Resolution with 99.80% voting percentage, as under:

*“RESOLVED that the CoC be and is hereby approve and authorize RP for submitting application to adjudicating authority for exclusion of 139 days (169 days less 30 days of IRP period) and extension of CIRP period upto 330days ending on 28<sup>th</sup> September 2022 to complete the pending CIRP matters”*

8. The learned RP stated that this Tribunal passed the order of admission on 03.11.2021, however in view of the inability of the IRP, vide order dated 09.11.2021 appointed a new IRP and the order copy was issued on 12.11.2021, hence the said period required to be excluded. Further, IRP expressed his unwillingness to continue in the second COC meeting held on 10.01.2022 and the COC also decided to replace him in the said COC. This Tribunal approved the appointment of RP on 16.03.2022 and the order was received by the RP on 23.03.2022, hence Applicant is also seeking exclusion of 72 days on account of the period in which there was no RP to the Corporate Debtor. Further, except for the work done till the First Meeting of COC, no further action was taken during the period till the appointment of RP, hence excluding the period of the first 30 days, COC also has the view that out of 169 days till 20.04.2022, the balance period of 139 days excluding the first month 30 days' period to be excluded including the exclusion sought above for the smooth conduct of the Corporate Insolvency Resolution Process. He has referred to the decision of Hon'ble NCLAT in ***Quin Logistics India Pvt Ltd vs. Mach Soft Tech Pvt Ltd CA 185 of 2018, SCC Online NCLAT 243***, where the applicant is entitled to 139 days' exclusion from the CIRP period.
9. We have heard the learned counsel for the applicant Shri Vinod P V along with the learned RP Shri K Parameswaran Nair through video conferencing and had gone

through the pleadings placed on record especially the copy of the minutes of the 4<sup>th</sup> Committee of Creditors meeting held on 09.06.2022.

10. We place reliance on the judgment of Hon'ble NCLAT referred to by the applicant in ***Quin Logistics India Pvt Ltd (supra)***, wherein it is held that for the following good reason and unforeseen circumstances, the intervening period can be excluded for counting the total period of 270 days:

*“(i) If the corporate insolvency resolution process is stayed by 'a court of law or the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court.*

*(ii) If no 'Resolution Professional' is functioning for one or other reason during the corporate insolvency resolution process, such as removal.*

*(iii) The period between the date of order of admission/moratorium is passed and the actual date on which the 'Resolution Professional' takes charge for completing the corporate insolvency resolution process.*

*(iv) On hearing a case, if order is reserved by the Adjudicating Authority or the Appellate Tribunal or the Hon'ble Supreme Court and finally pass order enabling the 'Resolution Professional' to complete the corporate insolvency resolution process.*

*(v) If the corporate insolvency resolution process is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and corporate insolvency resolution process is restored.*

*(vi) Any other circumstances which justifies exclusion of certain period.”*

11. Considering the dictum laid down by the Hon'ble NCLAT in the above-cited judgment, we are of the considered opinion that the relief sought for by the applicant may be considered as a special case. However, before concluding, we have to take note of the fact that the former IRP, Mr. Lukose Joseph has unnecessarily created a hurdle in the process on one pretext or the other and he has not followed the IBBI Regulations in its true spirit. A mere example is that even after his change and

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appointing the applicant as RP, he took one month to hand over the physical copies of the documents. Such action of IRPs appointed should be viewed seriously.

- 12.** We allow this application and exclude the period of 139 days i.e., 10 days from 03.11.2021 to 12.11.2021, 72 days i.e., from 10.01.2022 to 23.03.2022 and another 57 days on account of non-completion of the Corporate Insolvency Resolution Process during the IRP Period from the period of Corporate Insolvency Resolution Process of the Corporate Debtor. The Resolution Professional, Mr. K Parameswaran Nair, is directed to complete the process without further delay.
- 13.** Registry is directed to send a copy of this order to the IBBI for their perusal and appropriate steps while preparing the panel of IPs.

Dated this the 1<sup>st</sup> day of June, 2022.

Sd/-

**(Anil Kumar B)**  
**Member (Technical)**

ASHOK KUMAR BORAH  
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Date: 2022.07.04 16:24:18 +05'30'

**(Ashok Kumar Borah)**  
**Member (Judicial)**

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