

INVP/02/KOB/2021

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH**

INVP/02/KOB/2021

In

IBA/51/KOB/2019

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

Order delivered on 30th June 2021

Coram:

**Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
Hon'ble Shri Satya Ranjan Prasad, Member (Technical)**

Applicant:

Dr.C. Bharath Chandran
(Suspended Director of Corporate Debtor)
72, Nambalakathu Thazhamangalam,
Athani Lane, TC 26/362, Vanzhiyoor
Trivandrum-695035.

Vs.

In the matter of

Dhanalakshmi Bank Limited
Dhanalakshmi Building, Naickanal,
Thrissur-680001, Kerala

Versus

Trivandrum International Health Services Ltd
TCIT 17407, Sut Royal Hospital,
Kochulloor, Trivandrum
Thiruvananthapuram-695011 through
Resolution Professional Mr.Raju Palanilkiunnathil Kesavan

Parties/Counsel present (through video conference)

For the applicant
For Respondent/RP

: Mr. Rishabh S. Khemuka, Advocate
: Mr. Vinod PV, Advocate

ORDER

This INVP/02/KOB/2021 has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by the suspended director of the Corporate Debtor of the Trivandrum International Health Services Ltd. seeking the following relief: -

“This Tribunal be pleased to allow the present application and allow the present applicant who is the suspended director of the Corporate Debtor to submit a Resolution Plan to the R.P and members of the COC.”

2. The brief facts of the case are as under: -

The Application for Corporate Insolvency Resolution Process filed by Dhanalaxmi Bank Ltd (Financial Creditor) against Trivandrum International Health Services Limited (Corporate Debtor) was admitted by this Tribunal vide order dated 07.02.2020 in IBA/51/KOB/2019 wherein Shri Raju Palanilkunnathil, was appointed as Interim Resolution Professional. In the 2nd meeting of Committee of Creditors held on 06.08.2020, the IRP was appointed as Resolution Professional. Accordingly, the Resolution Professional is carrying on the CIR Process. The last date of completion of 180 days of CIRP was 05.08.2020. This Tribunal granted exclusion of 223 days from 23.03.2020 to 31.10.2020 from the CIR Process vide order dated 17.11.2020 in MA/180/KOB/2020. Accordingly, the last date of completion of 180 days was on 15.03.2021. This Tribunal vide order dated 22.03.2021 in IA(IBC)/67/KOB/2021 granted extension of 90 days and directed the RP to

INVP/02/KOB/2021

complete the CIR Process on or before 13.06.2021 and the timeline now will be ending on 23.7.2021.

3. It is also submitted that the Ministry of Micro, Small and Medium Enterprises vide its notification S.O. 2119(E) in the Official Gazette dated 26.06.2020 clarified the Classification of Enterprises stating that-

“1. Classification of enterprises. -An enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely: --

(i) a micro enterprise, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;

(ii) a small enterprise, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees; and

(iii) a medium enterprise, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees.”

4. It is also stated that since the outbreak of the Covid-19 pandemic the present applicant has been working day and night to provide medical services to not only Covid-19 positive patients but have also been providing medical services to all the patients who approached him. Even though, the Applicant was treating various patients he attended the COC meetings where he mentioned to all the members that the

INVP/02/KOB/2021

directors/promoters have already filed their proposal for settlement of dues with Financial Creditors with an intention to file a withdrawal application. That the members of the COC requested the applicant to submit an exhaustive resolution plan for consideration and approval. It is also stated that the Corporate Debtor post notification from the Ministry of Micro, Small and Medium Enterprises became applicable to be a medium enterprise and thus as per Section 240A of the Code in which Section clauses (c) and (b) of Section 29A won't be applicable to the present Corporate Debtor. It is submitted that as clauses (c) and (h) of Section 29A won't be applicable to the Corporate Debtor the present Applicant who is the suspended director of the Corporate Debtor would be eligible to apply and submit a resolution plan. He has also referred to the decision of the Hon'ble Supreme Court in Suo Moto Civil Writ Petition No. 03 of 2020, by which the period of limitation for any suit, appeal, application or proceeding from 15.03.2020 till 14.03.2021 shall stand excluded and notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021.

5. The Resolution Professional filed a counter to the INVP/02/KOB/2021 and stated that the applicant invited EOI to submit the Resolution Plan on 26.10.2020. In response to the EOI, applicant received expression of interest from four prospective resolution applicants and three prospective resolution applicants submitted their resolution plan on 15.02.2021. The Resolution Plans

INVP/02/KOB/2021

are under the process of verification and the members of the COC insisting for physical meeting with the prospective resolution applicants to deliberate and negotiate on the plan. However, in view of the lockdown, that did not take place. In the meantime, the Applicant submitted a request on 21.04.2021 to the RP and members of COC seeking permission for submitting a resolution plan in his capacity as promoter claiming that corporate debtor is an eligible MSME unit as per the revised classification implemented by Government of India effective from June,2020. He has further stated that due to the continued lockdown restrictions from March,2020 he was prevented from submitting a resolution plan as he was engaged in treatment of patients as a front-line doctor.

6. It is also stated that the Applicant/Promoter also informed the RP and the COC that he has also filed an Intervention Application before this Tribunal on 01.05.2021 (INVP/02/KOB/2021) in IBA/51/KOB/2019 seeking indulgence of this Tribunal to permit for submission of his resolution plan. It is stated that the members of the CoC in its 6th meeting held on 26.05.2021 considered the request of the Applicant and made an observation that resolution plans received consequent to the invitation of Expression of Interest are presently under the consideration of CoC for approval following the process under the Insolvency and Bankruptcy Code, and Regulation thereto. The, RP/CoC has no express authority/power to accept such a belated EOI/Resolution Plan without permission of this Tribunal. Hence the

INVP/02/KOB/2021

Applicant has been informed to submit his plan along with the permission, if any, granted by this Tribunal and granted time till 05.06.2021.

7. It is also stated that the Applicant submitted an electronic copy of Resolution Plan on 05.06.2021 and hardcopy on 11.06.2021. However, the same was not taken into consideration since the same was not supported by any approval from this Tribunal to accept a belated Resolution Plan. Based on the request of the Applicant that on account of lock down he could not process his urgent application, the COC in its 7th meeting held on 09.06.2021 vide Item No.7, further allowed time up to 16.06.2021 to submit the direction, if any, from this Tribunal. However, the Applicant failed to comply with the timeline. Hence COC resolved to proceed with examination of other three resolution plans since the timeline for CIRP is ending on 23.07.2021.

8. Hence the RP prayed that this Tribunal may pass appropriate order with respect to accepting the Resolution Plan considering the view taken by the COC and meeting eligibility criteria prescribed for submitting the resolution plan including the eligibility as an MSME in the interest of justice.

9. We have heard the learned counsel appearing on either side and Perused the documents placed on record. During the arguments, learned Counsel for the applicant stated that he has received the MSME Udhayam Registration Certificate on 16.6.2021 and that his resolution plan also may be considered by the CoC while finalizing the CIR Process. Learned

INVP/02/KOB/2021

counsel for the respondent stated that since the CIR Process is to be completed on or before 23.7.2021, if this Tribunal grants a short period to the applicant to submit the Resolution Plan, the Resolution Professional has no objection in accepting the Resolution Plan for placing before the CoC for its consideration. Learned counsel for the applicant stated that he may be granted a short time to submit the Resolution Plan bringing to the notice of the Resolution Professional the Certificate obtained by the applicant as an MSME.

10. The learned counsel for the Resolution Professional stated that if a short period is granted by this Tribunal, the Resolution Professional is ready to accept the Resolution Plan, so that he can place the same before the CoC for its consideration. Moreover, the Respondent in his counter stated that the CoC in its meeting held on 9.6.2021 resolved that if this Tribunal permits the applicant to submit the Expression of Interest and Resolution Plan, the CoC is ready to accept the same for consideration.

11. In view of the aforesaid submissions, and in view of the fact that the CIR Process is to be completed on 23.7.2021, the applicant is granted permission to submit the Resolution Plan within a week from the date of receipt of this order. If the applicant submits such a Resolution Plan, the Resolution Professional shall place the Resolution Plan before the Committee of Creditors for their consideration and further steps in the matter shall be taken without further delay,

INVP/02/KOB/2021

so that the CIR Process can be concluded in time. It is made clear that no further time will be granted to the applicant for submission of the Resolution Plan.

12. With the above directions, INVP/02/KOB/2021 stands disposed of.

Dated this the 30th day of June, 2021

Sd/-
(Satya Ranjan Prasad)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)