

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

IBA/20/KOB/2020

(Under Section 9 of Insolvency and Bankruptcy Code 2016)

Order delivered on 25th June, 2020

Coram:

Hon'ble Shri Ashok Kumar Borah, Member (Judicial)

In the matter of

M/s. Varghese Panicker Architects
(formerly Thomas Panicker and Varghese
Architects) Managing Partner, TCA/171(8)
Thiruvananthapuram Tennis Club Junction
Kowdiar, Thiruvananthapuram
Kerala-695003. Applicant/Operational Creditor

Vs.

M/s. KIMS Healthcare Management Limited
(KIMS Hospital), Kumarapuram
Poonthi Road, Anamukham, PB No.1
Anayara PO, Trivandrum,
Kerala, India-695029.Respondent/Corporate Debtor

Parties/Counsel present (through video conferencing)

Counsel for the Operational Creditor : Shri B. Ashok Shenoy, Advocate
Counsel for the Corporate Debtor : Shri S.M.Ameerul Millath, Advocate

ORDER

IBA/20/KOB/2020 is filed by the Applicant/Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor M/s KIMS Healthcare Management Limited having CIN No: U85110KL1995PLC009336.

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2. The Operational Creditor submitted that the Respondent/Corporate Debtor had entrusted the Architectural Work of **KIMS East 3rd Phase, KIMS OP/Room Block** and an agreement was entered with KIMS Health Care Management Limited for the purpose of delivery of service as an architecture consultancy for the construction of **KIMS Nursing College** at Thonnakkal. The payment for the architecture work has been defaulted by the Corporate Debtor. The amount claimed to be in default is ₹3,34,89,230/- (Rupees Three Crores Thirty Four Lakhs Eighty Nine Thousand Two Hundred and Thirty Only)

3. Accordingly, on 24.02.2020, the Operational Creditor approached before this Tribunal by filing the above IBA praying to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. On notice the Corporate Debtor appeared and raised dispute by filing counter on 18.03.2020.

4. Today, when the case came up for hearing, the learned counsel for the Operational Creditor appeared through video conferencing and submitted that a withdrawal memo has been sent through e-mail. In regard to the submission made by the Operational Creditor, this Bench directed him to file hardcopy of the withdrawal memo. At that juncture the learned counsel who appeared for the Corporate Debtor through video conferencing stated that he has no objection in withdrawing the IBA, provided no condition is being imposed.

5. The Operational Creditor has filed a withdrawal memo dated 25.06 2020 stating as under;

“in view of the objections filed by the Corporate Debtor in their Reply Statement, on the count that the operational debt in relation to which the above application is filed by the Operational Creditor has not been previously adjudicated/settled; Operational Creditor craves leave to withdraw the above application, seeking to pursue appropriate remedies otherwise available to them in law, as against the Corporate Debtor in respect of the debt thereof”.

6. The learned counsel for the Corporate Debtor has also filed a written statement on 25.06.2020 stating that while permitting withdrawal of the above application, the Bench may record in its order that the applicant cannot approach before this Bench by filing fresh application for the same alleged operational debt since the ground for withdrawal by the Operational Creditor i.e. the Operational Debt not being previously adjudicated/settled is a ground which the Operational Creditor was well aware before filing this application and is not a new ground.

7. In view of the withdrawal petition and written statement both dated 25.06.2020 filed by the Operational Creditor and Corporate Debtor, this Bench is of the opinion that the Operational Creditor has requested only for withdrawal of the **IBA/20/KOB/2020** without any condition, the prayer for withdrawal may be allowed. As regards the request of

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Corporate Debtor to impose certain conditions, this Bench is of the opinion that no such condition is necessary at this moment in this matter.

8. Accordingly, the prayer for withdrawal is allowed and **IBA/20/KOB/2020** stands disposed of. No costs.

Dated the 25th day of June, 2020

Sd/-
(ASHOK KUMAR BORAH)
MEMBER(JUDICIAL)