

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

IA(IBC)/74/KOB/2021

In

IBA/21/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:

1. Joseph Joseph
Director, M/s Churakkulam Tea Estate Pvt.Ltd.
Vandiperiyar, Idukki, Kerala-685533.
2. Mikesh Joseph
Director, M/s Churakkulam Tea Estate Pvt.Ltd.
Vandiperiyar, Idukki, Kerala-685533.
3. Sumesh Joseph
Director, M/s Churakkulam Tea Estate Pvt.Ltd.
Vandiperiyar, Idukki, Kerala-685533.
4. Rajesh Joseph
Director, M/s Churakkulam Tea Estate Pvt.Ltd.
Vandiperiyar, Idukki, Kerala-685533.

Vs.

Respondents

1. Churakulam Tea Estate Pvt.Ltd.
Vandiperiyar, Idukki, Kerala-685533.
2. CA, Jasin Jose,

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5D, Skyline Riverscape, Thottumugham
Aluva, Kerala-683101.

3. The South Indian Bank Ltd having its
Regd.Office at SIB House, TB Road,
Thrissur-680001.

4. Mr. Jose Pradeep S/o K.O.,Dvassia
Aged 58, r/o Valiyaparambil House,
St.Vincent Rad, Ernakulam North
Kerala-682018.

Parties/Counsel present (through video conference)

For the applicant	: Mr. Harikumar G. Nair, Advocate
For the respondent 3	: Shri Sunil Shanker, Advocate
For the Resolution Professional	: Shri Jasin Jose, RP

ORDER

This is an Application filed under Section 60 (5) of the Insolvency and Bankruptcy code, 2016 read with Rule 11 of the National Company Law Tribunal Rules,2016 by Mr. Joseph Joseph and others against M/s. Churakulam Tea Estate Private Limited and Others to direct the Respondent No. 2 (Mr. Jasin Jose, former Resolution Professional) to consider Resolution Plan submitted by the Applicants in terms of the provisions of the I&B Code,2016 and to set aside the Resolution Plan submitted by the 4th Respondent.

2. In the Application it is stated that Applicants are the erstwhile promoters of the Corporate Debtor. They have now secured enough funds to settle the dues of the Respondent No.3 and every other creditor to the Respondent No.1 Company. The recent amendments to the Insolvency and Bankruptcy Code,2016

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have paved the way for Applicants themselves to file a Resolution Plan in terms of Section 30 (1) of the Code,2016. The Corporate Debtor was registered under Micro, Small or Medium Enterprise (MSME)on 23.03.2015. The Company has accordingly applied under Udayam Registration. Being a Micro, Small or Medium Enterprise are entitled to file the Resolution Plan, since the Section 240A which specifically dispenses the applicability of Section 29A clause (c) to (h) in case the Corporate Debtor is a Micro, Small or Medium Enterprise. The applicant referred to a decision of the Hon'ble NCLAT in the matter *Sarvana Global Holdings Ltd & Another V. Bafna Pharmaceuticals Ltd & Others [Company Appeal(AT) (Insolvency) No.203 of 2019]* and stated that the I&B Code clearly envisages maximisation of value of assets of the Corporate Debtor so that they can efficiently run as a going concern and in turn will promote entrepreneurship. The preamble does not, in any manner refer to liquidation, which is only availed of as a last resort if there is either no Resolution Plan or the Resolution plan submitted are not up to the mark. Since the Applicants have mobilised sufficient funds and the Resolution Plan of the 4th Respondent has been failed, it is only just and reasonable that the applicants be extended an opportunity to settle their entire dues which would further the cause of Applicants, Respondent Nos. 1to3 and other creditors of the Respondent No.1 Company.

3. The Resolution Professional filed a Memo and stated that this Tribunal approved the Resolution plan on 08.01.2021 and the 9th CoC decided the existing

CoC to continue as the Monitoring Committee. Therefore, Resolution Professional was absolved from all statutory duties. Since the Monitoring Committee has no statutory powers to intervene in the operation of the Corporate Debtor, he has no comments to offer.

4. We have heard the learned counsel for the Applicant and Shri. Jasin Jose, former Resolution Professional in the matter through video conferencing and had gone through the records placed before this Tribunal. It appears from the record that the Applicants herein are the ex-directors of the Corporate Debtor. The Applicants herein stated that they have registered the Corporate Debtor under the Micro, Small and Medium Enterprises and Annexure-A/1 is the Registration Certificate. While perusing the records, it is seen that Annexure-A/1 is an Acknowledgement issued on 23.03.2015 by the Department of Industries, Government of Kerala valid for a period of 2 years which has already expired. The Applicants could not produce any valid Certificate issued with regard to MSME Status of the Corporate Debtor.

5. If the Corporate Debtor is a Micro, Small or Medium Enterprise is entitled to file the Resolution Plan, Section 240 A which specifically dispenses the applicability of Section 29A clause (c) to (h) in case the Corporate Debtor is a Micro, Small or Medium Enterprise as per the Amendment Act 26 of 2018. The intention behind the enactment of this provision was to grant exemptions to Corporate Debtor which are MSME(s), by permitting a promoter who is not a

wilful defaulter or covered under any other specific disqualification as provided under Section 29A, to bid for the Resolution Plan of an MSME.

6. In this Application, the Applicants claims that Corporate Debtor is a MSME as per the acknowledgement Certificate annexed with the application. The Corporate Debtor was put under Corporate Insolvency Resolution Process vide order dated 28.11.2019. Regulation 40-A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations,2016 set out the Model Time Line for Corporate Insolvency Resolution Process, within 75 days of Corporate Insolvency Resolution Process the Resolution Professional have to commence invitation of EoI. In the present case as per Regulation 36-A Resolution Professional Published Form G, on 17.02.2020, within 35 days i.e. on 115th day, final list of the Resolution Applicant has to be prepared by the Resolution Professional. EoI was received from 2 Resolution Applicants, out of which one was found eligible. Further the 3rd CoC decided to extent the time for submission of EOI for further 10 days and reissue the FORM G. No fresh EoI has been received. Therefore, the provisional list of the Resolution Applicant was submitted on 23.03.2020. Meanwhile lockdown was imposed by the Government of India. On 29.10.2020 Resolution Applicant submitted the revised Resolution Plan and the CoC considered the same in the 9th CoC meeting convened on 4.11.2020. In the 10th CoC meeting dated 20.11.2020 it was unanimously approved the Resolution Plan in compliance with the provisions of the I&B

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Code,2016. Applicants who are also a member of the CoC was silent during the CIRP period and they want to submit the plan after the approval of Resolution Plan by the Adjudicating Authority on 08.01.2021.

7. As Corporate Insolvency Resolution Process is a time bound measure, value maximization has also to be in time bound manner. At this late stage, this Tribunal cannot allow this application to set aside the approved Resolution Plan and allow the applicants to submit a Resolution Plan.

8. Hence **IA(IBC)/74/KOB/2021 is dismissed.**

Dated the 30th day of June, 2021

Sd/-

(Satya Ranjan Prasad)
Member (Technical)

Sd/-

(Ashok Kumar Borah)
Member (Judicial)