

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH, KOCHI

IA(IBC)/84(KOB)/2022

IN

CP(IB)/34(KOB)/2021

(Under Section 19(2) of the IBC, 2016)

**Order delivered on: 23 .06.2022**

Coram:

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

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

C.A Jasin Jose

Ponmattom, Madassery,

Mookkanoor P.O

Angamaly,

Kochi – 683 577.

Interim Resolution Professional

in the matter of S.D Pharmacy Private Limited

... Applicant/Interim Resolution  
Professional

Verses

1. Ramesh Kesavan  
Suspended Director of  
SD Pharmacy Pvt. Ltd., 26/1176,  
Dhanwanthari Bhavan,  
Balhavan Road, Alleppey,  
Alapuzha, Kerala – 688 011.

2. Sathy Chatthanad Kesavan  
Suspended Director of  
SD Pharmacy Pvt. Ltd., 26/1176,  
Dhanwanthari Bhavan,  
Balhavan Road, Alleppey,  
Alapuzha, Kerala – 688 011.

...Respondents

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

For Applicant

... S/Sh. Hari Kumar G Nair, Akhil Suresh,  
Ms. Anu Balakrishnan Nambiar - Advocates

For Respondent No. 1

... S/Sh. Georgy Johny, Jayakrishnan A  
- Advocates

**ORDER**

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

This IA(IBC)/84(KOB)/2022 has been filed under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 by the Interim Resolution Professional in the matter of S.D Pharmacy Private Limited against the Suspended Directors of the S.D Pharmacy Pvt. Ltd. seeking the following relief:

“Direct the Respondents to provide the books of accounts and all the relevant information in respect of the Corporate Debtor, assist the IRP to identify the company assets, handover the Keys of the factory gate and extend all the support and cooperation to complete the CIR Process.”

2. The brief facts of the case are that this Tribunal vide order dated 31/03/2022 in CP(IB)/34(KOB)/2021 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and the applicant herein was appointed as the Interim Resolution Professional (IRP). In compliance with the order passed by this Tribunal, the applicant attempted to discharge his duties as an IRP as prescribed under Section 18(1) of the IBC, 2016. **Section 18(1)** reads thus: -

“18. The interim resolution professional shall perform the following duties, namely: —

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

- (i) business operations for the previous two years;
- (ii) financial and operational payments for the previous two years;
- (iii) list of assets and liabilities as on the initiation date; and
- (iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies; Duties of interim resolution professional.

(vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board.”

3. The applicant in this application stated that he had requested the respondents herein to provide all the information, in order to identify the company assets, handover the Keys of the factory gate and extend all the support and co-operation to complete the CIR Process. But the respondents have not made any arrangements to provide the details and hand over the possession of the Corporate Debtor.

4. Even though notice was served on 2<sup>nd</sup> respondent, she did not appear and contested the matter. The 1<sup>st</sup> respondent has filed a reply, interalia, stating that his company had availed cash credit facility of Rs. 80,00,000/- (Rupees eighty lakh) from the Financial Creditor Dhanalaxmi Bank Limited and executed a loan agreement on 14/08/2010 and mortgaged its land and factory, hypothecated their stock & other assets in favour of the Financial Creditor for the loan amount. The Respondent No. 1 also executed a personal guarantee in favour of the Financial Creditor for the said amount.

The Financial Creditor finally revised the loan account on 29/05/2018 for a further period of 12 (Twelve) months with interest at the rate of 13.5% per annum. He has also stated that he had been suffering from cerebral haemorrhage and went into a coma stage and later undergone brain surgery at Aster Medicity Hospital, Kochi. Because of the surgical complications and intensive physical weakness, he was unable to look after the affairs of the company.

5. Vide order dated 08/03/2021, the respondent Company was set ex-parte for the non-appearance of his counsel. Pursuant thereto the respondent preferred a petition for review of the order setting the respondent ex-parte on 08/03/2021 and sought for an opportunity to clear the entire liability towards the Applicant Bank. But the same was rejected by this Tribunal. Being aggrieved by the dismissal, the respondent approached the Hon'ble High Court of Kerala by filing W.P © No. 15804 of 2022.

6. In the meantime, independent of all the legal proceedings pending, the respondent preferred a proposal for One Time Settlement (OTS) before the Financial Creditor and also the Interim Resolution Professional appointed by this Tribunal. While the proposal for OTS preferred by the respondent was pending consideration with the Financial Creditor, the WP© No. 15804 of 2022 was disposed off with a direction to the Resolution Professional to place the proposal before the Committee of Creditors (CoC) at the next meeting. Thereupon, the proposal for OTS has been sanctioned by the Financial Creditor and the same was communicated to the respondent vide letter dated 04/06/2022 issued by the Financial Creditor. In view of the OTS approved by the Financial Creditor, the respondent should be permitted to settle his entire liability

towards the Financial Creditor within the time stipulated in the OTS. He has produced the terms and conditions of the OTS as under:

- Rs. 25 lakh to be remitted on or before 09<sup>th</sup> June, 2022. Rs. 35 lakh to be paid by 30/06/2022 and the balance amount of Rs. 45 lakh by 31/07/2022.
- Our Bank's claim in CoC may be withdrawn after the amount of Rs. 105.00 lakh (proposed OTS) adjusted to the loan account.
- Any delay in payment of instalments will attract interest at the rate of 9% from the due date till the date of payment.
- Bank will file a settlement memo in NCLT stating that in the event of the Corporate Debtor defaulting the repayment as proposed above, the Original Application may be restored.
- The property documents will be released to the mortgagor only after the acceptance of our withdrawal from the CIRP.
- Bank will not withdraw OA filed at DRT and will file consent decree if paid the OTS amount fully within the given timeline referred above.
- Upon payment of the OTS amount in full, all the legal cases may be withdrawn in consultation with our panel advocate dealing with the case.
- The borrowers/guarantor have to withdraw all the cases filed by the borrower against the Bank, if any.
- The offer will be automatically cancelled if the sanction is not accepted by the borrower and or violating any of the terms and conditions.
- Non-compliance of any of the terms of OTS would make the OTS approval infructuous.
- The borrower to withdraw the pending SAs and all other legal actions initiated, if any, against the Bank before the cut-off date.
- The approval of OTS would automatically stand cancelled in case the borrower fails to comply with the terms and conditions of the OTS sanction mentioned herein.

7. On going through the above OTS proposal, which was approved by the Financial Creditor who has filed the CP(IBC)/34(KOB)/2021, it is seen that the respondent can clear the liability to the Financial Creditor by 31/07/2022. It is also stated that if the claim of the Bank of Rs.105 lakh is paid as per the OTS approved, the Bank is ready to withdraw their claim before the CoC. It is also stated that if the Corporate Debtor delays the payment instalments, that will attract interest at the rate of 9%.

8. Since the Corporate Debtor/Respondent has got time upto 31/07/2022, the prayer of the IRP to provide the books of accounts, and all the relevant information in respect of the Corporate Debtor, assist the IRP to identify the company assets, handover the Keys of the factory gate and extend all the support and cooperation to complete the CIR Process cannot be granted at present, as the Financial Creditor who has filed the case before this Tribunal has agreed to the OTS, presumably with the approval of CoC, the IRP has to wait till the cut off date provided in the OTS approval.

9. In view of the above, **IA(IBC)/84(KOB)/2022 is dismissed** with liberty to the IRP to take appropriate steps, if the OTS approved is failed and if reported by the Financial Creditor to the CoC.

Dated this the 23rd day of June, 2022

Sd/-

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

AJ

ASHOK KUMAR  
BORAH

Digitally signed by ASHOK KUMAR  
BORAH  
Date: 2022.06.24 11:14:13 +05'30'

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