

NATIONAL COMPANY LAW TRIBUNAL KOCHI BENCH

MA/68/KOB/2020

In

IBA/7/KOB/2019

(Under Section 40(2) of CIRP Regulation and Sec 12(2) of IBC 2016)

Order delivered on 26^h June 2020

Coram:

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

Applicant:

**Shri Jasin Jose
Ponmattam Madassery House, Mookannoor P.O.,
Angamaly, Ernakulam 683 577.
(Resolution Professional)**

In the matter of

Financial Creditor

Federal Bank Ltd
Regd Office : Federal Towers, Bank Junction,
Aluva, Ernakulam District Kerala and
Branch Office at LCRD-Ernakulam Division,
Ground Floor, Federal Towers, Marine Drive,
Ernakulam 682 031

Versus

Corporate Debtor

Sargam Builders Pvt Ltd
28/3858-D, Sargam House,
Water Land Road, Elamkulam,
Cochin, Kerala 682 020.

Parties/Counsel present (through video conference)

Counsel for the applicant : Shri Jasin Jose, RP appeared through VC
Counsel for the Corporate Debtor : Nil

1. This MA/68/KOB/2020 has been filed by the Resolution Professional appointed by this Tribunal, under Section 40 (2) of Corporate Insolvency Regulation Process and as per Section 12 of IBC 2016 for extension of time period of Corporate Insolvency Resolution Process (CIRP).
2. The application for Corporate Insolvency Resolution Process filed by Federal Bank Ltd (Financial Creditor) under Section 7 of the Insolvency and Bankruptcy Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 was admitted by this Tribunal on 20.09.2019 in TIBA/7/KOB/2019.
3. It is stated in the application that on 26.09. 2019 the applicant received a Copy of an order passed by the Honourable High Court of Kerala in W.P (C) No. 25642 of 2019 deferring further proceedings in the NCLT order dated 20.9.2019 till 23.10.2019. It is further stated that if the petitioners therein prefer an appeal challenging the order on or before 23.10.2019, further proceeding in this Tribunal's order shall be deferred for a period of one week also. Thereafter, the Hon'ble NCLAT vide order dated 28/11/2019 in Company Appeal (AT insolvency) No 1297/ of 2019 directed not to constitute the COC until further orders and to maintain the company as a going concern with the assistance of

the Suspended Board of Directors. The NCLAT dismissed the above Company Appeal vide order dated 27.01.2020.

4. The CIRP was resumed since 07.02.2020 and the first COC was held on 17.02.2020. As per Minutes of 2nd meeting of the COC held on 16.03.2020 resolved with 100% voting to file an application for Extension time of 90 days since 105 days lost due to stay period from various courts and CIRP period of 180 days ends on 21.03.2020.
5. This MA was filed on 20.03.2020 for extension of 90 days from 21.03.2020 to complete the Corporate Insolvency Resolution Process of M/s. Sargam Builders Pvt Ltd. The matter was put before the Bench on 26.6.2020 for hearing.
6. At this juncture I considered the order passed by the Hon'ble Supreme Court of India, *Suo Motu Writ Petition (CIVIL) No. 3/2020* in which it was held that:

"This Court has taken Sua Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of Limitation or under Special Laws (both Central and /or State). To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in such proceedings, irrespective of limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order(s) to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities."

7. Similarly, I also considered the notification published by Insolvency and Bankruptcy Board of India dated 29.03.2020, (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020, stated that: -

“40C. Special provision relating to time-line.

Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”.

8. In the light of the above judgment of the Hon'ble Supreme Court and the amendment made on 29.03.2020 under Section 40 C and also considering the averments made by the RP in this MA and on hearing the Resolution Professional through video conferencing, this Tribunal allow the prayer as follows:

This Tribunal extend the time limit for CIRP till 29.03.2020. After 29.03.2020 the *special provision relating to the time line* issued vide notification dated 29.03.2020 will apply till the lockdown lifting notification is issued by the Government of India.

9. With the above direction MA/68/KOB/2020 is allowed.

Dated this the 26th day of June 2020

Sd/-

Ashok Kumar Borah
Member (Judicial)