

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

IA(IBC)/300/KOB/2022

IN

IBA/51/KOB/2019

(Under Section 60(5) of IBC, 2016 and Rule 11 and 153 of NCLT Rules, 2016)

And

IA(IBC)/328/KOB/2022

IN

IBA/51/KOB/2019

(Under Section 60(5) of IBC, 2016 and Rule 11 of NCLT Rules, 2016)

In the matter of:

Dhanalaxmi Bank Limited Vs Trivandrum International Health Services Limited;

MEMO OF PARTIES:

IA (IBC)/300/KOB/2022

Dr. C BHARATH CHANDRAN, Erstwhile Promoter of M/s. Trivandrum International Health Services Limited (Corporate Debtor), Residing at Nambalakathu, Thazhamangalam, Athani Lane, TC 26/262, Vanzhivoor, Trivandrum – 695 035;

...Applicant

-Versus-

Mr. RAJU PALANIKUNNATHIL KESAVAN, Liquidator of M/s. Trivandrum International Health Services Limited (Corporate Debtor), M/s. Agasti Associates, Chartered Accountants, First Floor, CNRWA – 6, Cherupushpam Lane, Kadavanthara, Kochi, Kerala – 682 020.

... Respondent

And

IA (IBC)/328/KOB/2022

Dr. C BHARATH CHANDRAN, Personal Guarantor of Trivandrum International Health Services Limited (Corporate Debtor), 72, Nambalakathu, Thazhamangalam, Athani Lane, TC 26/262, Vanzhivoor, Trivandrum – 695 035.

...Applicant

-Versus-

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA(IBC)/300/KOB/2022 & IA(IBC)/328/KOB/2022

IN

IBA/51/KOB/2019

In re: Dhanalaxmi Bank Limited Vs. Trivandrum International Health Services Limited

Mr. RAJU PALANIKUNNATHIL KESAVAN, Liquidator of the Corporate Debtor, M/s. Agasti Associates, Chartered Accountants, First Floor, CNRWA – 6, Cherupushpam Lane, Kadavanthara, Kochi, Kerala – 682 020.

... Respondent

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

IA(IBC)/300/KOB/2022

For Applicant : Mr. Reghunath Sarangapani, (CA)

For Respondent : Mr. Raju Palanikkunathil Kesavan
(Liquidator)

IA(IBC)/328/KOB/2022

For Applicant : Mr. Reghunath Sarangapani, (CA)

For Respondent : Mr. Raju Palanikkunathil Kesavan
(Liquidator)

Order reserved on: 11.11.2022

Order pronounced on: 22.12.2022

ORDER

1. These Interlocutory Applications No. IA(IBC) 300/KOB/2022 and IA(IBC) 328/KOB/2022 have been filed by Dr. C. Bharath Chandran (hereinafter called as “the Applicant”), against Mr. Raju Palanikunnathil Kesavan, Liquidator of M/s Trivandrum International Health Services Limited (Corporate Debtor). The applicant herein is the promoter and erstwhile Director of the Corporate Debtor.
2. M/s Trivandrum International Health Services Limited (Corporate Debtor) was admitted into CIRP vide order dated 07.02.2020 in CP (IBA)/ 51/KOB/

2019. The applicant along with the other co-applicants had submitted a Resolution Plan for revival of the CD but failed to deposit the Performance Bank Guarantee with the CoC. Thereafter, the applicant approached the CoC to consider the Plan, intimating the Liquidator that they were willing to replace the existing co-applicants to honour all the commitments. Subsequent CoC meeting held on 30.10.2022, 2 Financial creditors holding 64.13% stake expressed their 'No objection' to the change in co-applicants, if approved by this Tribunal. Meanwhile, Sabine Hospital and Research Centre Pvt Ltd. ('Sabine') without submitting EoI within due date, approached this Tribunal to permit them to participate in Resolution Process of the CD. By order dated 21.12.2021, Sabine was permitted to participate in the Resolution Process as well as the CoC to consider the substitution of co-applicants of the present applicant. Pursuant to this order, the Respondent invited a fresh Expression of Interest from the applicant and Sabine. The applicant also participated in the second round of invitation of EoI and submitted the Plan. The CoC, thereafter, upon evaluating both the resolution Plans at their 21st Meeting held on 19.02.2022, in their commercial wisdom, unanimously passed the resolution rejecting the Resolution Plans.

3. Subsequently, this Tribunal had passed Liquidation Order dated 02.06.2022 in IA(IBC)/49/KOB/2022 and appointed Raju Palanikkunathil as Liquidator of the Corporate Debtor to conduct Liquidation process. Pursuant to the Liquidation order, the Liquidator made public announcement on 08.06.2022. The last date for submission of Scheme as per Section 230 of the Companies Act within 90 days was 31.08.2022.

IA(IBC) 300/KOB/2022

4. Applicant side filed this application under Rule 11 and 153 of the NCLT Rules, 2013 for the following reliefs:

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IN

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In re: *Dhanalaxmi Bank Limited Vs. Trivandrum International Health Services Limited*

- a. *to condone the delay for belated submission of scheme under Section 230 of the Companies Act, 2013 with the Liquidator in view of the receipt of list of verified claims only towards the end of timeline stipulated under Section 2B of the IBBI (Liquidation Process) Regulations, 2016;*
- b. *That this Hon'ble Tribunal may be pleased to grant Four (4) weeks' time to applicant to submit the scheme as under Section 230 of the Companies Act, 2013;*
- c. *That this Hon'ble Tribunal may be pleased to direct the Liquidator to not to proceed with the liquidation and auction proceedings till the receipt and consideration of the scheme submitted by the applicant*

IA(IBC) 328/KOB/2022

5. Applicant side filed this application under Section 60 (5) of IBC, 2016 read with Rule 11 of the NCLT Rules, 2016 for the following reliefs:
 - a. *That this Hon'ble Tribunal award an exclusion from the date of the Liquidation Order till the date when the Respondent furnished the verified list of claims, i.e., from 2nd June 2022 to 23rd August, being 82 days;*
 - b. *That the Committee of Stakeholders of the Corporate Debtor consider the proposal of the Applicant under Section 230 of the Companies Act, 2013;*
 - c. *That this Hon'ble Tribunal stay the liquidation process till such proposal is considered by the Committee of Stakeholders;*
 - d. *That this Hon'ble Tribunal stay the sale of any of the assets of the Corporate Debtor, whether as a going concern or otherwise, until and unless the proposal of the Applicant is first considered.*
6. The brief facts of the applications are that the applicant for the submission of a scheme as per Section 230 of the Act within the timeline stipulated under Section 2B of the Regulations, requested the respondent/Liquidator vide email

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dated 27.06.2022 for list of verified claims received pursuant to public announcement dated 02.06.2022, which is vital for the preparation of a scheme under Section 230 of Companies Act and for considering dues payable to various creditors. The respondent's email dated 19.07.2022 stated that the claims were still under verification and the last date for submission of claims was 10.07.2022. Thereafter, the applicant sent another email dated 28.07.2022 to the respondent requesting again for copies of list of claims and stating that it has been eighteen (18) days since the last date for filing of the claim. The respondent/ Liquidator vide email dated 23.08.2022 shared the list of claims.

7. The learned counsel for the applicant stated that 3 days after the receipt of claims, the respondent held and chaired the 1st Meeting of the Committee of Stakeholders and proposed that Corporate Debtor will be sold as a going concern. The resolution to sell the Corporate Debtor was passed unanimously in the Committee of Stakeholders. It is further submitted that the Respondent published an Auction Sale Notice dated 01.09.2022 for the sale of Corporate Debtor as a going concern with the last date for submission of EMD on 17.09.2022 and the auction to be held on 21.09.2022. Therefore, prays to condone the delay in filing the scheme for compromise or arrangement with the Respondent/ Liquidator of the Corporate Debtor since the Applicant received the list of verified claims only just 8 days (i.e., 31.08.2022) before the deadline/last date for submission of the scheme.
8. The Respondent/ Liquidator filed a counter and stated that the Applicant is not a member or shareholder of the Corporate Debtor. The present application is filed in his individual capacity as an erst- while director of the Corporate Debtor. After rejection of 3 opportunities availed by the applicant during CIRP for submission of the Resolution Plan by the CoC as well as the Adjudicating Authority, the Applicant filed an appeal before the Hon'ble NCLAT challenging the rejection of plan and order of liquidation dated 02.06.2022 by

this Tribunal. However, the said order was confirmed by the Hon'ble NCLAT vide order dated 19.10.2022. It is further submitted that the contentions raised by the Applicant are incorrect and applicant is trying to mislead this Tribunal with false information.

9. As regards the allegation on delay in furnishing the list of claimants by the Liquidator, it is stated that the Liquidator has provided the claim list after its preparation and acted in accordance with the procedure prescribed under the Code and Regulations. After verification of claim by the Liquidator under Regulation 30 on 10.08.2022, the Liquidator has filed the list of stake holders with claim list published in the IBBI website on 11.08.2022 and filed to this Tribunal on 21.08.2022. The Respondent forwarded the copy of claim list to the applicant on 16.08.2022. Subsequently, the Respondent again reforwarded the Claim list on 23rd August 2022 on the oral request from the Applicant. Therefore, there is no delay in furnishing the claim list, but the period taken by the Respondent is statutory timeline to prepare the claim list and furnish to the Applicant and other stake holders.
10. The Liquidator alleged that the applicant has not submitted any draft corporate restructuring scheme under Section 230 of the Companies Act, either to the Respondent or creditors / members of Stake Holders within the permissible period for consideration. It is further stated that none of the secured creditors in the COC has discussed regarding any compromise proposal received from the Applicant and applicant has not taken any steps for obtaining for complying such requirements within the period prescribed for compromise under the Code.
11. The learned Liquidator submitted that in the 1st SCC meeting held on 26th August 2022, the Committee decided to sell the Corporate Debtor as a going concern in which the applicant was also present. The Respondent has made public announcement on 01.09.2022. The last date of submission of the bid

was on 17.09.2022. As there was no participant for the first auction, steps for further action for sale is under the consideration of Stakeholders Committee.

12. After hearing learned counsel for the applicants and learned Liquidator and careful perusal of the rival contentions by the parties, we are of the considered view that only cardinal point for determination in the present application is that during this belated stage of Liquidation process, whether the applicant be allowed further time to prepare and present a Scheme under Section 230 of the Companies Act, 2013 ('Act')?
13. Nowadays, liquidation proceedings are evolving into restructuring proceedings by taking recourse to Section 230 of the Companies Act, 2013. Section 230 allows the liquidator of a company undergoing liquidation to file an application before this Tribunal to seek sanction for a scheme of arrangement between the company and its creditors and, where applicable, its members. The Hon'ble National Company Law Appellate Tribunal has brought the Section into limelight in series of orders starting with *S.C. Sekaran vs. Amit Guptaix Company Appeal (AT) No. 495 of 2018 Dated 29 January 2019*. Here, the Hon'ble NCLAT directed the liquidator, appointed under the IBC, to "take steps in terms of Section 230" for the revival of the Corporate Debtor before undertaking the sale of its assets.
14. In view of the provision of Section 230 and the decision of the Hon'ble Supreme Court in *Meghal Homes Pvt. Ltd. v. Shree Niwas Girni K.K. Samiti & Ors.[2007] 7 SCC 753* and *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors. [2019] SCC OnLine SC 73*, it was directed that the 'Liquidator' should proceed in accordance with law. As required by Section 35 of the IBC, he will check the claims of all creditors, seize and take control of the Corporate Debtor's assets, properties, effects, and actionable claims, as well as conduct business on behalf of the Corporate Debtor in order to facilitate its beneficial

liquidation. The Liquidator will obtain information pursuant to Section 33, combine the claims pursuant to Section 38, and, upon verification of the claims pursuant to Section 39, admit or deny the claims as required by Section 40. Before taking steps to sell the assets of the Corporate Debtor, the Liquidator will take steps in terms of Section 230 of the Companies Act, 2013.

15. Considering the present case, it is found that Liquidator has complied with all the provisions of Liquidation Process herein stated above till the sales of assets of the Corporate Debtor. These applications are filed by the erstwhile Director of the Corporate Debtor seeking condonation of delay for belated submission of the Scheme under Section 230 of the Companies Act and additionally seeking 4 more weeks to submit the Scheme. And also, to stay the Liquidation process including the sale of any assets of CD and also to direct the stakeholders to consider the Scheme under Section 230 of the Act.

16. It is true that the Compromise proposal has to be made based on the list of creditors appearing in the books of account of the Company. Applicant being erstwhile Director had all the records pertaining to the Creditors of the Corporate Debtor and further during CIRP, applicant has been provided with the Information Memorandum with which the same applicant has already availed 3 opportunities during for submission of the Resolution Plan. Initially, the Resolution Plan submitted by the Applicant was duly approved by the CoC dated 7.10.2021 with 100% voting rights. However, after accepting the Letter of Intent, the Applicant failed to execute the required Performance Guarantee within the stipulated time and hence the Resolution Plan failed due to the lapse of the Applicant. Again, the Applicant availed opportunity by the intervention of this Tribunal vide order dated 21.12.2021 but the Resolution Plan then failed to obtain the required 66% of voting for approval of the Plan. It was again considered during the hearing of Liquidation Application and as a last resort this Tribunal vide order dated 30.03.2022 permitted the applicant to submit the

Resolution Plan, however, the applicant failed to submit such a proposal and consequently, this Tribunal pronounced the Liquidation Order on 02.06.2022.

17. The I & B Code, 2016, seeks to maximise the value of the corporate debtor's assets rather than the value of any particular stakeholder. Therefore, the primary goal is Resolution, which is followed by the secondary objective of Maximization of Value of Assets of the Corporate Debtor, and the third goal of Promoting Entrepreneurship, Availability of Credit, and Balancing of Interests.
18. In catena of the judgments passed by the Hon'ble Supreme Court of India, it has been decided that the commercial wisdom of the Committee of Creditors is supreme and judicial interventions by the Adjudicating Authority and/ or the Appellate Authority should be minimum. The antecedent of the applicant shows that he is not genuine in his attempts, already sufficient opportunities given. It appears causing further delay will prejudice the rights of others. Considering the same, we are of the view that, as the Resolution Plan submitted by the same applicant was rejected by the Committee of Creditors and a long time has been taken for passing the Liquidation order by considering the Resolution Plan for several times, it is not just to give further time for consideration of submitting a Scheme as per Section 230 of the Act and it is a universal accepted fact that there is a time value of money which is very significant in effective revival of the Corporate Debtor and therefore, no stay for the Liquidation proceedings.
- 19. The applications are, therefore, Dismissed.**
20. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.

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21. Let the certified copy of the order be issued upon compliance with requisite formalities.
22. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2022.12.22 14:48:01 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2022.12.22 14:17:59 +05'30'
RAJ

P. Mohan Raj
Member (Judicial)

Signed on this the 22nd day of December, 2022.

CV