

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

MA No. 202/KOB/2020

IN

TIBA/31/KOB/2019 & TIBA/10/KOB/2019

(under Section 60(5) of IBC, 2016)

In the matter of:

1. PUSHPA SURESH, Krishna Bhavan, West Port P.O., Mavelikara, Ippuzha, Kerala-690101;
2. OMANAPRASAD, Lekshmi Chakkulathu House, Omalloor, P.O., Pathanamthitta, Kerala-689647;
3. LAILA SAMUEL, Panikal House, Punnakkadu P.O., Pathanamthitta, Kerala-689652;
4. ANNIE ABRAHAM, Puthuchiramannil House, Kumbalampoika P O, Pathanamthitta, Kerala-689661;
5. SASIDHARAN M.D, Acharimaloor House, Mookkannor, Ayroor P.O., Pathanamthitta, Kerala-689614;
6. REMANI AMMA, Souparnika, Pathiyoor East P.O. Kayamkulam, Kerala-690508;
7. SUSAMMA JOSEPH, Puthenparampil House, Kadapra P.O. Pathanamthitta, Kerala- 689621;
8. ASHA VINOD, Puttalil Mepurath House, Keezhukara, Kozhencherry P.O, Pathanamthitta, Kerala- 689641;
9. SUMITHA UDAYAKUMAR, Puthooppallil House Melukara, Kozhencherry P O, Pathanamthitta, Kerala-689641.

...Applicants

-Versus-

1. PD VINCENT, Resolution Professional, Kerala Housing Finance Limited
1st Floor, 65/236451, Ponoth Road, Kaloor, Ernakulam, Kerala ,682017;

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In re: Pushpa Suresh and Ors. Vs. PD VINCENT (RP) Kerala Housing Finance Limited and Ors.

2. K. PARAMESWARAN NAIR, Authorised Representative, 37/1736 E, Kripasagaram, Kmurali Road, Kadavanthara, Kochi 20 Ernakulam, Kerala 682020

... Respondents

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant's : 1. Shri. Bijoy P Pulipra, PCS
For Respondent's : 1. Shri Vincent PD, Resolution Professional in person(R1)
2. Shri K Parameswaran Nair, Authorised Representative in person(R2)

Order reserved on: 16.09.2022
Order pronounced on: 28.09.2022

ORDER

1. This M.A has been filed under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 by some of the Debenture holders of Kerala Housing Finance Limited (KHFL), the Corporate Debtor under CIRP, who are Financial Creditors and members of the Committee of Creditors (COC), against the Resolution Professional (RP) and the Authorised Representative (AR) of the debenture holders of the CD seeking following reliefs:

- i. Direct the Resolution Professional to identify and determine the Preferential Transactions, Undervalued Transactions, Extortionate Credit Transactions, Fraudulent Transactions and Fraudulent Trading under Section 43 to 50 of the insolvency and Bankruptcy code, 2016 and report it to this Hon'ble Tribunal for necessary orders.*

on 4th January 2020 was not intimated to them by the RP or any notices in relation thereto given by the Authorised representative. Further there was preferential, undervalued, fraudulent and extortionate credit transactions in the CD over the years as observed by the RP and a forensic audit was conducted and the report of same was also not circulated to the applicants. It is contended that the duty of the AR is to participate and vote on behalf of the financial creditor he represents by acquiring prior voting instructions obtained through physical or electronic means. It is stated that out of the 6547 NCD holders represented as a class only 4964 persons have provided email ids to the RP and the AR being aware of the same has not taken any effort to obtain prior voting instructions properly or through alternative means and hence deprived the applicants of their right to participate in the decisions of COC. The applicants have further stated that in the 3rd COC meeting where the EOI was discussed, the vote share granting authorisation to the AR was less than 50% of the total weightage of the NCD holders and that the applicants could not participate and cast their vote as they were unaware of the same. It is stated in the 7th COC minutes that in view of the inability to proceed with a viable EOI it is proposed to initiate the liquidation of the CD. The applicants contended that the same was voted by financial creditors representing 19.02% of vote share of NCD holders and a majority including applicants has not been able to provide their opinions in the CIRP. The applicant has also stated that since the expenses incurred by RP including CIRP cost as claimed was not brought to the notice of the applicants it is not justifiable to seek the amount from the applicants.

4. The RP stated that the out of 9 applicants, 4 had given email ids in their claims received in FORM CA and hence all communications regarding IM and COC meetings were duly given to them. The RP submitted that all meetings of COC was conducted duly serving the Notices and Agenda Notes to members of COC. The RP relied on regulation 16A (6) of the Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to state that the RP provided

electronic means for communication between AR and Creditors in class and the AR has voted only based on the prior voting instruction obtained for such meetings. RP stated that the preparation of IM requires various extensive data containing the financials, litigations, employee dues and so on and the same has not been available to him as the records were confiscated by the Police Crime Branch and is before various courts. Hence, there was difficulty in preparation of the same. RP further stated that as per section 29 of IBC read with regulation 36 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the IM shall be made available after getting an undertaking to the effect that applicant shall maintain confidentiality of the information and shall not use it to cause undue gain or loss to itself or others. This matter along with availability of IM was communicated to all the NCD holders whose email IDs were duly provided. The RP stated that as the CD has not maintained appropriate books and records under law and there was alleged Preferential Transactions, Undervalued Transactions, Extortionate Credit Transactions, Fraudulent Transactions and Fraudulent Trading under Section 43 to 50 of the insolvency and Bankruptcy code, 2016 due to which a Forensic Audit was conducted. The Forensic Audit found that there was Preferential Transactions, Undervalued Transactions, Extortionate Credit Transactions, Fraudulent Transactions and Fraudulent Trading in the CD however the amount was not quantifiable due to unavailability of proper records. It was also observed that there were secondary books of accounts maintained by CD but it was not available and hence RP has also preferred an application for investigation under section 213 of Companies Act, 2013.

5. The AR stated that 9 COC meetings were conducted since commencement of CIRP. The applicants were granted opportunity to submit claim in FORM CA electronically and the communication regarding all meetings, notice and agenda was circulated duly in those mails provided by applicants. The AR stated that the provisions of IBC, 2016 were strictly being adhered to while

conducting and taking prior instructions for voting. Regulation 16A of Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provides for electronic means of communication between AR and the creditors and that for the 6547 NCD holders it is not necessary to conduct physical meeting by the AR for taking voting instructions. The AR has forwarded the agenda circulated by RP to each NCD holders being financial creditors. He further contended that applicants are members of COC and has the right to appoint his choice of insolvency professional for representing them. He further stated that the applicants were aware of the CIRP as claims were submitted by them within time period and they had appointed the present AR to represent COC. He also submitted that the CIRP cost including AR's fees has not been paid till date. The AR stated that if any member of COC was not receiving proper communication, such member could approach the AR to provide correct email ID to ensure delivery of all the notice and communication. The act of applicants in not doing so shows that the intention of the applicants is not genuine.

6. Heard the submissions made by the learned counsel for the applicants and the learned RP and AR in person, and perused all the documents placed on record. At the outset it is seen that the CIRP process of the CD commences as early as on 18.09.2019 and till date the CIRP is still pending meaning the statutory period of 330 days have very well been crossed. Hence, the purpose of IBC and the substance of the Code has failed to have been achieved. Further, the major part of the COC is made up of 6547 number of NCD Holders forming 99.93%. The present application filed by financial creditors forms only a miniscule 0.24% of the COC. The primary issue raised by the applicants is that the whole CIRP process was not being made aware to them and that meetings of the COC, including notices and communications thereto, were conducted without their participation. This tribunal on perusal of the records and arguments on either side finds no merit in the same as the applicants have duly submitted their claim

forms to the RP in time and that they had every opportunity to contact the RP and the AR accordingly. The RP has submitted that there was a dedicated website made to conduct the CIRP proceedings and all information is duly made available in the same. Hence, the contention of the applicants that the notices and communication were not properly served cannot be accepted. Further, we note that the NCD holders forming class of financial creditors are of a huge number and the conduct of physical proceedings is not easy process considering the practicality of the same and that IBC is a time bound process. However, the learned RP took all the possible endeavour to conduct physical meeting of COC in Kerala where majority of the members resided only to learn that the NCD holders are not interested to pursue the matter of CIRP including the payment of any CIRP costs and the fees of the RP and the AR. The provisions of IBC, 2016 are clear that the communications during CIRP be made electronically. It was further learned that this case of CD involves huge amount of money which are part of crime and the matter is being contested at different levels of various judicial forums including SEBI which has taken up the matter extensively considering the grievances of the high number of NCD holders. There has been confiscation of the records of the CD by the Crime Branch of Police Kerala wherein proceedings are pending before criminal courts. The AR as well as the RP has also submitted that the NCD holders forming CoC has presently lost hope on the CIRP and the COC has resolved not to proceed with the CIRP and only to pursue the recovery proceedings before SEBI. Hence, we are of the view that the applicants can proceed before SEBI or its appellate authority to address their grievances. We further note that the liquidation application of the CD is pending to be heard before this Tribunal and at this stage it is not equitable to allow the prayers of the applicants who only form a miniscule percentage in the COC themselves. The applicants could have very well raised and sorted their concerns before the RP and AR themselves rather than approach this Tribunal at this stage. The present exercise

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of the applicants to seek such remedies at this stage is frivolous and is only going to delay the process envisaged under IBC further and shall cause detriment to the CIRP and the parties themselves. We therefore find no merit in the contentions of the applicants to seek the remedies as sought for.

7. The application is, therefore, **dismissed** and disposed of accordingly.
8. 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.
9. Let the certified copy of the order be issued upon compliance with requisite formalities.
10. File be consigned to records.

SATYARANJAN PRASAD

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Date: 2022.09.28 14:10:11 +05'30'

Satya Ranjan Prasad
Member (Technical)

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Date: 2022.09.28 17:41:14
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P. Mohan Raj
Member (Judicial)

Signed on this the 28th day of September, 2022.

Rohit