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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA(IBC)/1084(CHE)/2021 in IBA/471/2019

*(filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of NCLT Rules, 2016)*

S. Amarendran

Resolution Professional of
M/s. Sabari Realtors Private Limited
AVS VILLA HIG 428,
Marutham Nagarm
TNHB Phase 3,
Sholinganallur,
Chennai – 600 119

... *Applicant*

Order Pronounced on 26th November 2021

CORAM

R. SUCHARITHA, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

*For Applicant : Kaushik N. Sharma, Advocate
For KNS Law Chambers*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This is an Application filed by the Resolution Professional of M/s. Sabari Realtors Private Limited under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking relief as follows;

- a. Grant permission to conduct a Committee of Creditors meeting to place the Creditors Proposal submitted by Major Creditors within 330 days as mandated by IBC;
- b. To grant to the Applicant such further relief which this Hon'ble Tribunal may deem fit and proper in the circumstances of this case and in the interest of the Applicant;

2. The Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor was initiated by this Tribunal vide its order dated 30.09.2019 passed in IBA/417/2019 in an Application filed by a Financial Creditor under Section 7 of IBC, 2016 and based upon the consent given in Form - 2, one Mr. Swarnamani Ramasamy was appointed as the 'Interim Resolution Professional'. Thereafter, it is seen that the IRP moved MA/1339/2019 wherein he has expressed his inability to take up the assignment as IRP since he has already taken full time employment and in the said circumstances has sought to be relieved. Since no CoC was constituted, this Tribunal ordered notice to the Financial Creditor who has originally proposed the IRP and after obtaining consent from the Financial Creditor, this Tribunal appointed one Ms. Geetha Sridhar as the IRP vide its order dated 19.12.2019 and also the name was forwarded to IBBI for its confirmation. Thereafter, it is seen that this Tribunal by its order dated 07.01.2020 based upon the confirmation received from IBBI has appointed Ms. Geetha Sridhar as the IRP in respect of the Corporate Debtor.

3. Pursuant to her appointment, it is seen that the IRP has caused a Public Announcement in Form - A, wherein at Sl. No. 6, the Insolvency Commencement Date in respect of the Corporate

Debtor is shown as "13th January 2020". The 1st CoC meeting was held on 07.02.2020 and the CoC consist of two Financial Creditor and a total of 35 home buyers. It is seen from the minutes of the First CoC meeting that one of the Financial Creditor viz. HDFC Bank has entered into a (OTS) One Time Settlement with the Corporate Debtor on 26.12.2019 and in pursuance of the same has also received a sum of Rs.4.5 Crore and has also adjusted a sum of Rs.1,09,77,726/- which was lying in the settlement account of HDFC Bank Ltd. Further, it is recorded in the minutes that the HDFC Bank Limited though they were aware of the CIRP order dated 30.09.2019, as there was no public announcement, the Financial Creditor entered into an OTS with the Director of the Corporate Debtor.

4. The 2nd CoC meeting was held on 16.03.2020 wherein it is seen that one Mr. Lakshmi Subramnian was appointed as the Authorized Representative for the Financial Creditor in a class of Home Buyer. In the 3rd CoC meeting held on 30.04.2020 it was resolved to change the RP and accordingly the Financial Creditor has moved IA/343/2020 before this Tribunal under Section 27 of IBC, 2016 for change of RP. This Tribunal vide its order dated 15.06.2020 has appointed the Applicant herein as the RP in respect of the Corporate Debtor.

5. It is seen that the Applicant herein has filed IA/901/IB/2020 before this Tribunal against the Financial Creditor viz. HDFC Bank for recovery of Rs.1,09,77,216/- which was allegedly adjusted by the HDFC Bank consequent to an OTS entered into between the erstwhile Director of the Corporate Debtor and HDFC Bank Limited. Further, it is seen that the CoC in its 5th Meeting held on 08.10.2020 has authorized the RP to issue Form G to invite prospective Resolution Applicant and accordingly, the RP has issued Form – G on 15.10.2020 in Times of India and Dinamalar and on 29.10.2020 in Business Standard. The CoC in its 6th Meeting has agreed to extend the time for submission of the response to Form – G till 15.12.2020. Thereafter, in the 7th CoC meeting held on 23.12.2020 the last date for submission of Expression of Interest was extended upto 12.01.2021. In the 8th CoC meeting held on 28.01.2021, it is seen that the last date for submission of Expression of Interest was again extended upto 15.02.2021.

6. In the meantime, the RP has filed an Application IA/211(CHE)/2021 before this Tribunal seeking thereof to extend the CIRP period by 90 days and to exclude the Covid – 19 lockdown period from 25.03.2020 to 31.10.2020. Accordingly, this Tribunal

vide its order dated 07.04.2021 has allowed the said Application and thus the 270 days CIRP period came to an end 27.09.2021.

7. After going through the averments made in the Application, except for filing an Application for extension / exclusion of CIRP period, we are unable to determine the works done by the RP for the period after 28.01.2021 (from 8th CoC meeting) till 06.09.2021 (9th CoC meeting). The RP has not explained the works carried out by him during the interregnum period of around 220 days. Suddenly at the fag end of the expiry of 270 days of CIRP period, the 10th CoC meeting was convened on 21.09.2021 wherein the RP has stated that no resolution plan with respect of the Corporate Debtor was received pursuant to Form - G published on 29.10.2020. However, it is seen from the minutes that the 96.4% of the CoC has voted against the Liquidation of the Corporate Debtor. Further, it is also seen that a Financial Creditor viz. Mr. Kumaresan has given a proposal to the CoC for completion of the Sabari Serenity Project and since the 270 days of CIRP in relation to the Corporate Debtor came to an end on 27.09.2021 the said proposal cannot be placed before the CoC for its consideration. Hence the Applicant has moved the present Application seeking permission to conduct a CoC meeting to place the creditors proposal before the CoC for its consideration.

8. Heard the submissions made by the Learned Counsel for the Applicant. From the facts narrated above, it is seen that there has been certain serious lapses which has been committed by the erstwhile IRP / RP and present RP which are detailed hereunder;

- (i) When the CIRP in relation to the Corporate Debtor was ordered by this Tribunal on 30.09.2019 and that Sec.5(12) of IBC, 2016 defines "Insolvency Commencement Date" as the date of admission of the Petition by the Adjudicating Authority, it is not know why in the Public Announcement made by the RP, the "Insolvency Commencement Date" was stated as 13.01.2020.
- (ii) The first Form - G was issued on 29.10.2020 and thereafter only the last date was extended to submit the Expression of Interest. The RP could have very well informed the CoC and he could have issued another Form - G. It is seen for a period of one year no Form - G was issued and no plausible reasons have been adduced by the RP in this regard.
- (iii) From January 2021 till September 2021, except for filing an Application for exclusion / extension of CIRP period, no CoC meetings were held during the interim period and the RP has not explained as to what he was doing for the said period of 7 months. Further, no



actions have been taken by the RP during the said period.

- (iv) When the 270 days CIRP period in relation to the Corporate Debtor came to an end on 27.09.2021, the RP should have moved an Application under Section 33(1)(a) of IBC, 2016 for Liquidation of the Corporate Debtor. No Liquidation Application was ever filed. However, the present Application has been filed by the RP on 06.10.2021 without any approval from the Committee of Creditors which amount to gross violation of the Code.

9. In view of (8) above, at this stage, we direct IBBI to investigate into these lapses committed by the RP and also place a Report before this Tribunal on or before the next date of hearing.

10. Coming to the facts of the present case, it is seen that the CoC in its 10th Meeting has voted against the Liquidation of the Corporate Debtor. Further, the 270 days period of CIRP in relation to the Corporate Debtor came to an end on 27.09.2021. Also the RP has not moved any application seeking for exclusion of the second lockdown period. In such a piquant circumstances, taking into consideration the fact that the one of the Financial Creditor has expressed interest for completion of the Residential project, in the interest of justice, we hereby direct the RP to publish a fresh Form – G within a period of 5 days from the date of this order,

inviting plans to be given by the prospective Resolution Applicants and the RP is directed to complete the CIRP within a period of **90 days** from the date of this order.

11. The **Registry** is directed to communicate this order to IBBI for its compliance and Report.

12. Post this matter for hearing on **20.01.2022** for further hearing in this regard.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond