

MA/30KOB/2019
&
I.A. No.71/KOB/ 2019
in
IBA/240/2019

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

MA/30/KOB/2019
And
I.A. No.71/KOB/ 2019
In
IBA/240/2019
(Chennai Bench)

Under Section 60(5) of IBC 2016

Order delivered on 16.12.2019

Coram: 1. Shri Ashok Kumar Borah, Member (Judicial)
2. Shri Veera Brahma Rao Arekapudi, Member (Technical)

In the matter of

MA/30/KOB/2019

Dr.Mohammed Ismail
s/o. Mohammed Ali,
Madavana, Pathayikara P.O.,
Perinthalmanna, Malappuram - 679 322

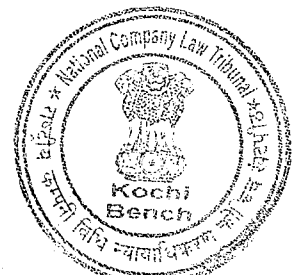
Applicant

Vs.

1. Mr.Rajendran, Resolution Professional
No.188/871, Habibulla Road,
2nd Floor, Evalappan Mansion,
Near Kadambakkam Railway Station,
T.Nagar, Chennai - 600 017
2. Union Bank of India
Eratupetta Branch,
1st Floor, Parani Arcade,
Erattupetta P.O., Kottayam 686121
3. Meenachil East Urban Co-operative Bank Ltd
No.4266, H.O. Poonjar, Poonjar Thekkekara PO,
Poonjar Branch, Kottayam 686 582

Respondents

AND



MA/30KOB/2019
&
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IA/71/KOB/2019

M.J.Infrastructre & Builders (India) Pvt Ltd., : Intervener
No.27, M.J.House, Manipal Country Road,
Singsanda Post,
Bangalore 560 068.

In the matter between

Union Bank of India,
239, Vidhan Bhavan, Mrg, : Financial Creditor
Nariman Point, Mumbai 400 021.

Vs.

Raihan Healthcare Pvt Ltd.,
EP0-4/744-C Murikkolil : Corporate Debtor
Nadackal P.O., Erattupetta,
Kottayam 686 124.

Parties/Counsels Present:

For *Intervener* : Shri Aswin Gopakumar, Advocate
For Resolution Professional : Smt. R.V.Yajura Devi, Advocate

1. Learned Counsel for the Intervener (new resolution applicant) as well as the Resolution Professional are present. None has appeared for the Corporate Debtor as well as applicant Dr. Mohammed Ismail.
2. MA/30/KOB/2019 has been filed by the Applicant who is the Suspended Director of the Corporate Debtor. The applicant in this MA alleging that the CIRP process has been conducted in an unreasonable and unfair manner. According to him the RP has failed miserably in ensuring that the Corporate Debtor and the CIRP



process is run in a manner so as to ensure that there is maximisation of the asset

of the Corporate Debtor. According to him the RP has unjustly caused the undervaluation of the assets of the Corporate Debtor. He also alleges that the RP has unjustly denied the claim of the Applicant to the tune of Rs.9.36 Crores and not made it part of the Resolution. However, when the IA was listed for hearing today, the applicant nor his counsel were present. Accordingly, the IA is dismissed for default and non-prosecution.

3. IA/71/KOB/2019 is filed by the Counsel for the Intervener/applicant, who is the new Resolution Applicant, praying to grant a period of 3 weeks for formulation and submission of the Resolution Plan.

Brief Background

4. In IBA/240/2019 filed by the Financial Creditor M/s. Union Bank of India, the Hon'ble NCLT, Chennai Bench vide order dated 20.3.2019 has initiated Corporate Insolvency Resolution Process against the Corporate Debtor M/s. Raihan Healthcare Pvt Ltd. The IRP appointed by the Tribunal was appointed as the RP by the COC in its 1st meeting held on 19.4.2019. The RP received three Expression of Interests, out of which only one applicant viz: Sabine Hospitals Health Care & Research Centre Pvt Ltd was qualified for the Resolution Plan. After detailed deliberations, the Committee of Creditors in its 8th meeting approved the Resolution Plan submitted by the Resolution Applicant M/s. *Sabine Hospitals Healthcare & Research Centre Pvt Ltd (SHRCPL)* with certain modifications.



5. Accordingly, the Resolution Professional vide MA/29/KOB/2019 submitted the resolution plan before this Tribunal for approval with the following prayer:

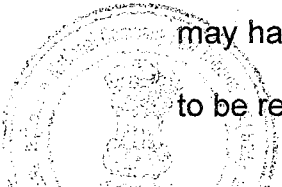
“a. *Approve the Resolution Plan submitted by Sabine Hospitals Healthcare & Research Centre Pvt Ltd (SHRCPL) which have been approved by the Committee of Creditors with modification in accordance with Section 30(4) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(3) of the IBBI(Insolvency Regulation Process for Corporate Persons) Regulations, 2016”*

and / or

b. pass such other orders as this court thinks fit and thus render justice.”

6. However, at the time of hearing on 9.12.2019 of the MA/29/KOB/2019 filed by the RP, the resolution applicant filed a reply in the above MA stating that the Resolution Applicant does not wish to continue as Resolution Applicant in any manner as modifications made by CoC in the Resolution Plan submitted by him, did not have his consent. They have also prayed for a direction to the RP to take action for return of the bank guarantee provided by the Resolution Applicant.

7. During the time of hearing of the said MA, the RP submitted that the time line extended by NCLT Chennai Bench has already over and the only possible option at this point of time is to pass an appropriate order for liquidation of the Company. The Resolution Professional, however, submitted that since one of the new Resolution Applicant namely M/s. M.J.Infrastructure & Builders (India) Pvt Ltd, Bengaluru has expressed their interest in the hospital, if the Tribunal wants to give an opportunity to the new Resolution Applicant, the period of CIRP process may have to be extended and further time has to be given as also the CoC has to be reconvened for the purpose of considering the new Resolution Plan, if any,



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being submitted by the new Resolution Applicant. The learned counsel further submitted that if the new resolution applicant is willing to pay upfront amount, then only the prayer of the new resolution applicant may be considered, as the Corporate Debtor is undergoing severe cash crunch and the employees are on agitation. The learned counsel for the new resolution applicant was also present during the hearing of the said MA and sought time to get the views of his client in regard to payment of upfront amount.

8. After hearing the learned counsel for the Resolution Professional, Resolution Applicant (SHRCPL) and also the new Resolution Applicant M/s. M.J.Infrastructure & Builders (India) Pvt Ltd, this Tribunal on 9.12.2019 has passed the following order:

- (i) *As the Resolution Applicant M/s. Sabine Hospital & Research Centre Pvt Ltd, Pezhakkappilly, Muvattupuzha is not agreeable for modifications made by the CoC, they have been discharged and accordingly the Resolution Plan submitted by them, treated as withdrawn.*
- (ii) *The new Resolution Applicant M.J. Infrastructure & Builders (India) Pvt Ltd is given one week's time to finalise their views on upfront funding in the Resolution Plan. They are advised to submit their views through an affidavit.*
- (iii) *If the new Resolution Applicant agreed for payment of upfront fees sought by the counsel for the Resolution Professional, the Bench will pass appropriate orders on the reconvening of CoC as well as extension of time to enable the new Resolution Applicant to submit their Resolution Plan to be considered by CoC.*



As a last chance to all the stake holders and to see that the Corporate Debtor remains as a going concern, the above order was passed by this Tribunal and posted for further hearing on 16.12.2019.

9. Today, we heard the arguments of the learned counsel for the new Resolution Applicant as well as the Resolution Professional. It appears that during the time of last hearing also the learned counsel for the new Resolution Applicant asked time regarding the payment of upfront fee as requested by the Resolution Professional. Now, the learned counsel for the new Resolution applicant have filed this IA/71/KOB/2019 without mentioning anything about the payment of upfront fee and seeking further time for getting instructions from his client.
10. The learned counsel for the Resolution Professional has submitted that the employees of the Corporate Debtor are on agitation and Doctors are not attending due to the uncertainty and requested the Bench to take a decision without any further delay to protect the value of the Corporate Debtor. The counsel submitted that as new resolution applicant is not committing for upfront payment, opposed for grant of any further time in this regard and averred that it is only a delaying tactics adopted by vested interests and prayed for passing necessary orders as prayed in IA/29/KOB/2019 in item (b).
11. In the light of the above, after hearing the arguments of the new resolution applicant as well as Resolution Professional and also thoroughly perusing the whole case records including IA/29/KOB/2019, we pass the following order:



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ORDER

- (i) The IA/71/KOB/2019 of the new Resolution Applicant M/s. M.J.Infrstructure & Builders (India) Pvt Ltd is hereby rejected.
- (ii) The Corporate Debtor is hereby put under liquidation with immediate effect under Section 33(1)(b) of IBC, 2016
- (iii) The Resolution Professional Shri S.Rajendran, No.71/1, 2nd Floor, Hari Krupa, Mc Nicholas Road, (Off: Poonamalle High Road) Chetpet, Chennai-600 031 is hereby appointed as Liquidator of the Corporate Debtor under section 34 of IBC, 2016 subject to submission of his written consent in the specified form before this Tribunal within 7 days of issue of this Order.
- (iv) The liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.
- (v) Accordingly, MA/30/KOB/2019 is hereby dismissed.

Accordingly, the MA/30/KOB/2019 and IA/71/KOB/2019 in IBA/240/KOB/2019 stands disposed of as above.

Dated this the 16th day of December, 2019.

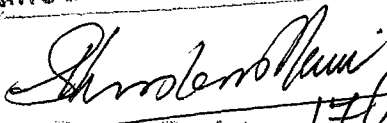
Sd/-

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

Sd/-

ASHOK KUMAR BORAH
MEMBER (JUDICIAL)

Certified to be True Copy


Deputy Registrar
National Company Law Tribunal
Kochi Bench
17/12/2019

Memo No.MA/30/KOB/2019/.....1093

Dated: 17.12.2019

TO

Shri S.Rajendran, No.71/1, 2nd floor, Hari Krupa, Mc Nicholas Road
(Off.Poonamalle High Road), Chetpet, Chennai-600031 (Liquidator).

