IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI

IA (IBC)/405/KOB/2022
In
IA (IBC)/ 325/KOB/2022
&
IA (IBC)/406/KOB/2022
In
IA (IBC)/ 333/KOB/2022
&
IA (IBC)/407/KOB/2022
In
IA (IBC)/ 324/KOB/2022
In
CP (IB) 20/KOB/2021

(Under Section 60 (5) of IBC read with Rule 11 of the Insolvency and Bankruptcy Code, 2016)

IA (IBC)/405/KOB/2022

In the Matter of:

George Varkey, Resolution Professional of Periyar Agro Food Industries Pvt. Ltd, No. 110, Ground Floor, Surabhi Nagar, Kakkanad, Kochi, Kerala- 682030

… Applicant

-Versus-

1. **Mohammed Riyaz,** Pareli House, Thandekad, Ponjassery, P.O, Permbavoor-683547

2. **Abdul Marakkar,** Pareli House, Thandekad, Ponjassery, P.O, Permbavoor-68354

… Respondents

-And-

IA (IBC)/406/KOB/2022

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… Applicant

-Versus-

1. **Mohammed Riyaz,** Pareli House, Thandekad, Ponjassery, P.O, Permbavoor-683547

2. **Mrs. Reena Riyaz,** Pareli House, Thandekad, Ponjassery, P.O, Permbavoor-693547

3. **Mohammed Riyaz,** Pareli House, Thandekad, Ponjassery, P.O, Permbavoor-693547

4. **Abdul Marakkar, Pareli House,** Thandekad, Ponjassery, P.O, Permbavoor-693547

5. **Naushad K.A, Kizhakkedathu House,** Thazhathangadi, Kottayam- 686005

...Respondents

-And-

IA (IBC)/ 407/KOB/2022

In the Matter of:

George Varkey, Resolution Professional of Periyar Agro Food Industries Pvt. Ltd, No. 110, Ground Floor, Surabhi Nagar, Kakkanad, Kochi, Kerala- 682030

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... Respondents

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IA (IBC)/407/KOB/2022 In IA (IBC)/ 324/KO In
CP (IB) 20/KOB/2021

-In-

In the Matter of:

M/S ITC LTD,

...Operational Creditor

-Versus-

Periyar Agro Food Industries

...Corporate Debtor

Coram:

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

Parties/Counsel present (through video conference):

For the Applicant /Resolution Professional	:	Mr, Hari Kumar G Nair, Adv Mr. Akhil Suresh, Adv
For the Respondent	:	Mr. Sukumar Nainan Oommen, Adv Mr. Sherry Samuel Oommen

Order reserved: 09.02.2023

Order pronounced on:17.02.2023

C O M M O N O R D E R

1. These Application are filed under Section 60 (5) of IBC read with Rule 11 of the NCLT Rules, 2016 to take on record the Revised Transaction & Forensic Auditor, report of corporate debtor dated 15.10.2022.

2. The applications IA (IBC) No.324/KOB/2022 is filed for fraudulent transaction under Section 66 of IBC and IA (IBC) No/325/2022 is filed under Section 45(1) for avoidance of undervalued transaction and IA(IBC)No.333/KOB/2022 is filed under Section 43 (1) for preferential transaction.

3. These present applications are filed to receive the Revised Transaction & Forensic Audit report of corporate debtor. In the main applications IA(IBC)No.324/KOB/2022,IA(IBC) No/325/2022, IA(IBC)No.333/KOB/2022 pleadings are completed; hearings not yet commenced. At this stage, on the applicant/resolution professional filed these application to receive Revised Transaction & Forensic Audit Report on file for effective adjudication further it is represented that even though forensic, auditor filed revised reports, there is no difference or changes made in the determination arrived by the Resolution Professional, Further it is stated that due to belated submission of the additional required information by the Financial Creditor the forensic auditor prepared this Revised report. The mistake crept inadvertently if these documents are taken on record, it will not prejudice the rights of the respondent.

5. On the respondent side vehemently opposed these applications to receive additional documents and detailed argument was made. On the respondent side argued on the merits of the main petitions itself. Further, it is argued that the petitioner concealed certain vital materials at the time of filing the petition. The

applicant also not adhere to the timeline fixed in regulation 35A of the IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016. Further respondent counsel doubted the integrity of the Resolution Professional and alleged that there is collusion between the Resolution Professional and the Forensic Auditor etc. It is alleged that Resolution Professional acted without any authority and without obtaining permission of this Adjudicating Authority. Further, he alleged that Resolution Professional filed this application without the consent of the Committee of Creditors and it is alleged that Resolution Professional is liable to be punished under Section 65 of the IBC. Further, he also alleged that determination arrived by the Resolution Professional is incorrect. The allegation whether stock was missing or available cannot be decided in this application.

6. Forensic Auditor made three modifications in the report they are (i) In respect of Stock; (ii) Trade receivables and (iii) Reduction of amount in undervalued transaction. For the modification made in stock, it is submitted that the Forensic Auditor received additional information from the Union Bank of India after the earlier report was filed. The Auditor made modifications in the report of stock, after considering the additional informations. For alteration made in the Trade receivables is concern, it is submitted that earlier the corporate debtors said that the amounts figured for sale is not correct amount, it was shown in enhanced manner in order to raise the banking limit; but during the 14th COC meeting held on 01.09.2021, the corporate debtors changed their version and stated that entries recorded about the sales are correct; this leads to modify the trade receivables to

the extent of Rs. 23,84,57,599.521/-. The another modification pertaining to under value transaction is concern, it is admitted by the Forensic Auditor due to mistake he failed to taken into consideration the received amount of Rs. 21,00,000/- towards the vehicle price, hence he mentioned the amount as Rs. 82,25,000/- now he had deducted the amount received, and said that this clerical error crept in the report.

7. On the respondent side argued that this application and amended Forensic Audit Reports are filed without the approval of COC hence these documents should not be taken into consideration. This application is filed by Resolution Professional, it can be presumed that the Resolution Professional is acting under the guidance of COC, for each and every acts this Authority cannot insist the Resolution Professional to produce minutes of meeting. Further, it is also argued that if the present report is received, the earlier report filed should be removed. If the new report is filed, replacing the existing report contention of the respondent is correct, here only corrected report has been filed, hence earlier report need not to be scrapped. Further, it is stated that the modification report is dated 15.10.2022 but CIRP period expired on 21.09.2022 for this reason also it is opposed.

8. The counsel for R.P represented that the applicant has not changed his determination and his stands; but in order to bring into the notice of Authority about the development, the Revised Report is filed by Forensic Auditor, he filed this application and left the matter to the discretion of Authority.

9. This is not the stage to decide all the points raised on the respondent side. The scope of this application is very limited whether the Revised report can be taken on file or not. As already stated in the main application hearing not commenced, hence at this juncture it is always better to provide sufficient opportunities to the parties concerned to place all the materials available at their hand, of course, without causing any prejudice to the other side. In the case at this stage only because of receipt of the additional documents no prejudice will cause to the respondent. Then merits and admissibility of the revised report and other aspect can be considered at the time of deciding the main applications. The **Apex Court in Bipin Chand Santi Lal Jain vs. State of Gujrat 2001, SCC Page No. 1 held as follows:**

> *Whenever an objection is raised during evidence taking stage regarding the admissibility of any material or item of oral evidence the trial Court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the Court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view, there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the Court has to decide the objection*

before proceeding further. For all other objections, the procedure suggested above can be followed.

Since, this Additional document/Revised report does not involve any stamp duty penalty; We are inclined to receive the additional documents and decided its admissibility, genuineness and relevant and other things at the time of hearing main petitions. Thus, these additional documents are taken on file subject to prove the relevancy.

In the result, these applications are **Allowed.**

10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,

11. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD Date: 2023.02.17 16:21:12 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ Date: 2023.02.17 14:50:18 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this 17th day of February, 2023.

Supriya-P.s