

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

**MA/29/CHE/2021
in
MA/1370/IB/2019
in
CP/698 (IB)/CB/2017**

*(Under Section 60(5)(a) & 60(5)(c) of the Insolvency and Bankruptcy Code,
2016 read with Rule 11 of the National Company Law Tribunal, Rules, 2016)*

In the matter of ***Frontier Lifeline Private Limited***

Mr. S. RAJAGOPAL,
Chairman – Monitoring Committee of
Frontier Lifeline Private Limited,
11/108, 4th Street,
Karpagam Avenue,
Raja Annamalaipuram,
Chennai – 600 028.

... Applicant

- Vs -

1. Dr. K.M. CHERIAN
Promoter and Erstwhile Director of
M/s. Frontier Lifeline Private Limited,
R-30-C, Ambattur Industrial Estate Road,
Chennai – 600 101.

2. St. Gregorios Medical Mission Hospital,
Rep. by its Chief Executive Officer,
Parumala, Pathanamthitta,
Kerala – 689 626.

3. M/s. First Step Ventures Limited,
Resolution Applicant of
M/s. Frontier Lifeline Private Limited,
Jebel Ali Free Zone Authority,
Government of Dubai,
United Arab Emirates,
Rep. by its Director
Mr. Kasiraman Swaminathan

... Respondents

Along with
IA/779/IB/2021 in MA/1370/IB/2019
in
CP/698 (IB)/CB/2017

*(Under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016
read with Rule 11 of the National Company Law Tribunal, Rules, 2016)*

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M/s. Frontier Lifeline Private Limited,
Jebel Ali Free Zone Authority,
Government of Dubai, United Arab Emirates,
Rep. by its Director,
Mr. Kasiraman Swaminathan

... Respondents

Order Pronounced on 25th April, 2022

CORAM:

JUSTICE (RETD) S.RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicants : Mr.B.Dhanraj, Advocate

For Respondents: Mr.Kaushik N Sharma, Advocate

Mr.Shinu J Pillai, Advocate

Mr.Anirudh Krishnan, Advocate

Mr.Mohit Kumar, Advocate

COMMON ORDER

**Per: JUSTICE (RETD) S.RAMATHILAGAM,
MEMBER (JUDICIAL)**

1. MA/29/CHE/2021

1.1 The above application has been preferred by Mr.S.Rajagopal, the Chairman of the Monitoring Committee (hereinafter referred to as 'the Chairman') of the Frontier Lifeline Private Limited (Corporate Debtor). under 60(5)(a) & 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016 seeking relief as follows;

a) Declare the alleged termination notice dated 12.12.2020 submitted by the 1st Respondent and accepted by the 2nd Respondent is null and void and consequently direct both the 1st and 2nd Respondent to desist from violating the terms of the Renewal Agreement dated 05.10.2018 entered with Frontier Lifeline Private Limited.

b) Pass an order directing the 3rd Respondent to cooperate in the entire process of continuing with the operations at SGMMH's premises, Parumala till expiry of the Renewed License Agreement.

1.2. It is averred in the application that the Corporate Debtor was admitted into CIRP on 02.08.2018 and Mr.S.Rajagopal, the Chairman herein was appointed as Interim Resolution Professional.

1.3. Pursuant to that an application moved for Liquidation of the Corporate Debtor wherein in view of the observations

made by the Hon'ble NCLAT, New Delhi in its order dated 17.07.2019 passed in the application preferred by the Resolution Applicant, this Tribunal has passed an order to appoint the Chairman as Liquidator of the Corporate Debtor with the specific direction to consider the Resolution Plan as a Scheme under Section 230 of the Companies Act, 2013 vide dated 04.09.2019.

1.4. Thereafter, this Tribunal has approved the Resolution Plan submitted by the FirstStep Ventures Ltd., 3rd Respondent herein (hereinafter referred to as 'Resolution Applicant') vide order dated 08.01.2020 wherein the Applicant herein was appointed as the Chairman of the Monitoring Committee.

1.5. It was submitted by the Learned Counsel for the Applicant that Corporate Debtor was operating St.Gregorious Memorial Cardio Thoracic and Vascular Centre - Training and Research Centre at Parumala, Kerala (hereinafter referred to as 'Paumala Centre') on the basis of the License Agreement executed between St. Gregorios Medical Mission Hospital (SGMMH) and the Paumala Centre a unit of Corporate Debtor promoted and represented by Dr.K.M.Cherian.

1.6. It was further submitted that the validity of the said license agreement was for an initial period of 15 years expiring on 13.12.2019. The said license was extended by Renewal

Agreement for the further period of 3 years till 13.02.2022 which was signed by the Dr.K.M.Cherian on behalf of the Corporate Debtor.

1.7. It was further submitted that Dr.K.M.Cherian ignoring the current status of the Corporate Debtor took a unilateral decision for cancellation of the above-said License Agreement. In turn, the Chairman immediately sent an e-mail to Dr.K.M.Cherian on 11.01.2021, asking him to withdraw the termination notice issued to the SGMMH. In reply e-mail on 12.01.2021, Dr.K.M.Cherian denied that the Parumala Centre belongs to the Corporate Debtor.

1.8. Similarly, the Chairman wrote to the SGMMH vide letter dated 18.01.2021 stating that Dr.K.M.Cherian is not a competent person to act on behalf of the Corporate Debtor and the notice of termination issued by him is not valid and emphasised that Renewed License Agreement subsists and it is binding on both the parties viz. SGMMH and the Corporate Debtor.

1.9. In the reply letter the SGMMH responded that the license agreement issued by the SGMMH was validly terminated by citing the termination letter dated 12.12.2020 issued by Dr.K.M.Cherian and the acceptance letter dated 16.01.2021 issued by SGMMH.

1.10 It was further submitted that the preamble of the License Agreement clearly stated that the license agreement is entered into between parumala centre a unit of Corporate Debtor represented Dr.K.M.Chерian and SGMMH. Moreover, the recitals of the Agreement recorded that Dr.K.M.Chерian was representing the licensee.

1.11. It was further submitted that pursuant to the sanction of the Resolution Plan on 08.01.2020 by this Tribunal the monitoring committee headed by the Chairman is the sole authorised signatory to discharge or executing any document in respect of Corporate Debtor and the termination notice dated 12.12.2020 issued by Dr.K.M.Chерian was not valid. In view of the above submissions the applicant sought to declare the alleged termination notice as null and void and to direct the SGMMH to comply with the renewal agreement dated 05.10.2018.

1.12. It was submitted by the Learned Counsel of Dr.K.M.Chерian that the relief sought in the application seems to be civil nature and the alleged license agreement and its terms are governed by Rent Control Act or Transfer of Property Act which cannot be adjudicated by this Tribunal.



1.13. The Learned Counsel appeared on behalf of SGMMH submitted that the renewal licence agreement between Dr.K.M.Chерian and SGMMH was executed on 05.10.2018 i.e., much after the initiation of CIRP against Corporate Debtor which was on 02.08.2018, by that time Dr.K.M.Chерian is incompetent to act on behalf of the Corporate Debtor and therefore the agreement he signed thereafter would not create any right or liabilities to the Corporate Debtor and argued that the application lacks *bonfide*. It was further submitted that as per clause 22 of the said agreement all disputes arise out the agreement shall be referred to Arbitration and SGMMH proposes to initiate arbitration proceedings against Dr.K.M.Chерian for license fee and other costs incurred to SGMMH.

1.14. In the course of hearing this Adjudicating Authority on 09.04.2021 has ordered a *staus quo* and stayed the termination notice issued on 12.12.2020 Dr.K.M.Chерian, until further orders. Against which **Dr.K.M.Chерian** preferred the below application.

2. MA/779/CHE/2021

2.1 This application has been filed by **Dr.K.M.Chерian**, under 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of NCLT Rules, 2016 seeking relief as follows;

- a) *Modify the order dated 09.04.2021 in MA/29(CHE)/2021 in MA/1370/IB/2019 in CP/698/IB/2017 passed by this Tribunal to be only to the movable belonging to the Corporate Debtor.*
- b) *Appoint an Advocate Commissioner to inspect the premises at St.Gregorios Hospital to make an inventory of the medical equipment belonging to Corporate Debtor.*
- c) *Permit the Applicant herein to remove the medical equipment donated to Dr.K.M.Cherian, the Applicant herein from the premises of the St.Gregorios Medical Mission Hospital.*

2.2. It was submitted by the learned Counsel appeared for Dr.K.M.Cherian that the SGMMH / 2nd Respondent herein in the year 2014 had approached Dr.K.M.Cherian to commence Cardiovascular Centre in SGMMH premises in the name of M/s. St. Gregorios Cardio Vascular Centre viz. parumala centre and the Applicant is the Sole Proprietor of the parumala centre.

2.3. It was further submitted that the Applicant had been operating the parumala centre as a sole proprietorship concern making use of the equipment that were donated to the Applicant in his personal capacity.

2.4. It was further submitted that in the year 2020 that 1st Respondent herein was appointed as Chairman of the Monitoring Committee to oversee the implementation of the scheme proposed by the Resolution Applicant viz. First Step Ventures Limited. According to the scheme on 06.03.2021 itself the term

of the Chairman came to an end and he had no power to file the application MA/29(CHE)/2021 before this Tribunal as the Monitoring Committee has become *functus officio*.

2.5. It was further submitted that as per above order, the Chairman had not provided any Authorisation for Assignment (AFA) as mandated by Regulation 7A of the IBBI (Insolvency Professionals) Regulations 2016, in this regard the Applicant has also filed a complaint before IBBI, which is *sub judice*. In addition to that Dr.K.M.Cherian filed writ petition WP No.233 of 2021 before the Hon'ble High Court of Madras.

2.6. It was further submitted that the status quo order in MA/29(CHE)/2021 is in relation to the movable goods of the Corporate Debtor. It was further submitted that the said order seems to be a blanket order to maintain status quo with regard to all the medical equipment at the premises of the SGMMH including some equipment that belong to Dr.K.M.Cherian, which were donated by the Aid Foundations to Dr.K.M.Cherian and not belong to the Corporate Debtor.

2.7. It was further submitted that the donated equipment require constant maintenance unless it will become unusable. In such circumstances Dr.K.M.Cherian / Applicant herein sought

modification in the status quo order passed by this Tribunal in MA/29(CHE)/2021.

2.8. In opposition to the above submissions, the Learned Counsel for the SGMMH in the counter submitted that the alleged medical equipment at the premises of the SGMMH was not donated to the Applicant and the medical equipment in the parumala centre, a unit of Corporate Debtor is duly reflected in the financial statements of the Corporate Debtor. Further, the Atomic Energy X-Ray license, GST, TDS, ESI, PF etc., relating to the centre are in the name of Corporate Debtor.

2.9. It was further submitted that the medical equipment alleged to have been donated in 2004, 2007 and 2014 are merged with the other plant and machinery of Corporate Debtor and the service costs have been borne by the Corporate Debtor. Further, contended that the invoices and e-mails filed in the application expresses that the medical equipment was intended to be delivered and used at Corporate Debtor and not given to Dr.K.M.Chерian in his individual capacity. In light of the above submission the Respondent prays dismissal of this application.

3. We have heard submissions made by the Counsels. During the course of successive hearing of the above petitions, it can be seen that the major deal of arguments in the present case has



revolved around the following agreements executed between the Corporate Debtor and St. Gregorios Medical Mission Hospital (SGMMH)

- a) the Licence agreement dated 14.02.2004.
- b) the renewal agreement dated 05.10.2018 and
- c) the termination notice dated 12.12.2020

4. On perusal of the Licence agreement (extracted hereunder)

THIS AGREEMENT IS ENTERED INTO AT PARUMALA (KERALA) ON THIS FOURTEENTH DAY OF FEBRUARY 2004 between

The St.Gregorios Medical Mission Hospital, Parumala, Kerala State, hereinafter referred as 'the Licensor' represented by His Holiness Baselios Marthoma Mathews II (Malankara Metropolitan and Catholicose of the East) of the first part and

St.Gregorios Memorial Cardio Vascular Centre (Training and Research) a unit of FRONTIER LIFE LINE PVT.LTD, 30-C Ambattur Industrial Road, Chennai - 600 050, promoted by Dr.K.M.Cherian, represented by him as Chairman and C.E.O, hereinafter referred to as the Licensee of the second part.

shows that Dr.K.M.Cherian is promoter of the parumala centre and he executed the Licence agreement in capacity of Chairman and CEO of the parumala centre and it is valid till 14.02.2019.

5. The renewal agreement dated 05.10.2018 (extracted below)

THIS AGREEMENT IS ENTERED INTO AT PARUMALA (KERALA) ON THIS 05TH DAY OF OCTOBER 2018 BETWEEN

The St. Gregorios Medical Mission Hospital, Parumala, Kerala State, hereinafter referred to as 'the Licensor' represented by His Holiness Baselios Marthoma Paulose II (Malankara Metropolitan and Catholicos of the East) of the first Part and

St. Gregorios Memorial Cardio Vascular Centre (Training and Research) a unit of FRONTIER LIFE LINE PVT LTD, 30-C Ambattur Industrial Road, Chennai - 600050 promoted by Dr.K.M.Cherian, represented by him as Chairman and CEO, hereinafter referred to as 'the Licensee' of the Second Part.

NOW THIS AGREEMENT WITNESS AS FOLLOWS

- 1) Both parties hereby agree to extend the present agreement for a further period of Three (3) years from the 14th February 2019, basically with the same terms and conditions unless otherwise specified here.

Depicts the same description mentioned in the original license agreement and it can be further seen that the renewal agreement the extension of license period is only 3 years from 14.02.2019 i.e up to 13.02.2022.

6. Before looking into merits of the case it noted that the renewal agreement required to be enforced is itself expired on 13.02.2022. Hence, the relief sought to declare the termination notice dated 12.12.2020 as null and void and to direct the Respondents to comply with renewal agreement dated 05.10.2020 become infructuous. Consequently, the IA/779(CHE)/2021 seeking modification in the status quo order dated 09.04.2021 passed in MA/29(CHE)/2021 also become infructuous.

7. For the above reasons, the applications MA/29(CHE)/2021 and IA/779(CHE)/2021 are **dismissed** as infructuous.

-Sd-

B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-

Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

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