

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

M.A. No. 162/KOB/2020

In

IBA No.52/KOB/2019

(Under Rule 11 of the NCLT Rules, 2016)

Order delivered on: 21.01.2021.

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

M/s Propyl Packaging Limited
Unit-3, Plot No.30&31, Kinfra Park
Nalukettu Road, Koratty,
Thrissur, Kerala-680308.

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Applicant-Corporate Debtor

Vs.

Mr.George Varkey,
Resolution Professional of Propyl Packaging
Limited, residing at Building No.110,
Ground Floor, Surabhi Nagar, Kakkanad,
Kochi, Kerala-682030.

...Respondent/Resolution Professional

Appearance (through video conferencing)

For Applicant : Mr. Shivsankar R.Panicker, Advocate
For Respondent : Mr. Vinod PV, Advocate

ORDER

This Miscellaneous Application has been filed by M/s. Propyl Packaging Limited through its Executive Director (hereinafter referred to as Applicant) under Rule 11 of the National Company Law Tribunal Rules, 2016 against Mr. George Varkey

MA/162/KOB/2020 in IBA/52/KOB/2019

(hereinafter referred to as Respondent) Resolution Professional in the matter of M/s. Propyl Packaging Limited. The Applicant sought for the following reliefs: -

- (a) Direct the Respondent to permit the Advocate, Chartered Accountant, Company Secretary of the Corporate Debtor/ Applicant to attend the meetings of Committee of Creditors.*
- (b) Direct the Respondent to provide the copies of all documents in connection with the CIRP process to the above- mentioned professionals.*
- (c) To grant any other equitable relief(s) as the Tribunal deems fit and proper.*

2. The facts in brief are as under: -

M/s. Prayag Private Limited, (Operational Creditor), filed IBA/52/KOB/2019 for initiation of Corporate Insolvency Resolution Process against the Respondent M/s. Propyl Packaging Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016. This Tribunal admitted the Application vide order dated 14.02.2020 and appointed Mr. George Varkey as the Interim Resolution Professional. The first meeting and the second meeting of the Committee of Creditors were convened on 13.03.2020 and 03.08.2020 respectively. In the second meeting, the CoC resolved to appoint the Interim Resolution Professional as the Resolution Professional. The third meeting of the Committee of Creditors was convened on 16.09. 2020. The status of the valuation report, amount incurred towards CIRP Cost, and filing Annual Returns, Insurance Policy of the Company etc. were discussed in the third meeting of Committee of Creditors.

3. The Applicant submitted that they be allowed to take assistance of his Advocate, Chartered Accountant and Company Secretary and to permit them to be included in the meetings of the Committee of Creditors and be provided with all

MA/162/KOB/2020 in IBA/52/KOB/2019

information. They can assist the Resolution Professional by furnishing information relating to disputes by or against the Corporate Debtor and the true financial position of the Applicant.

4. The Applicant further stated that the Chartered Accountant can render assistance in providing the latest annual financial statements. The Company Secretary can help in describing particulars of a debt due from or to the Corporate Debtor and other details related to guarantees. The Advocate can guide the legal compliances of transactions entered into with the Corporate Debtor, in order to effectively prepare the Information Memorandum in accordance with Regulation 36 of IBBI Regulations, 2016 read with Section 29 of IBC. It is also stated that the process of CIRP is highly procedural and it is difficult for a layman such as the Applicant to understand the procedural aspects involved in the CIRP. Since, the whole process affects the Applicant/Corporate Debtor, it is pertinent that he be reasonably made aware of the entire procedure with the help of his authorised representatives.

5. In the aforesaid circumstances the Applicant seeks directions from this Tribunal to permit the above-mentioned professionals to attend the meetings of Committee of Creditors and further assist the Applicant in the Resolution Process.

6. The Resolution Professional filed counter to the MA and stated that the Application is not maintainable under Section 17 of the Insolvency and Bankruptcy Code, 2016 (IBC) as from the date of appointment of IRP, the management of the affairs of the Corporate Debtor shall vest in the IRP and the powers of the Board of Directors of the Corporate Debtor shall stand suspended as that be exercised by the IRP. Therefore, the suspended director is not authorized to make an application in the name of the Corporate Debtor and has no authority to sign and execute any

MA/162/KOB/2020 in IBA/52/KOB/2019

documents, including affidavit for and on behalf of the Corporate Debtor. In view of the above, the present application filed in the name of the Corporate Debtor in the absence of any authority is liable to be dismissed. Under Section 21 of IBC, IRP shall constitute a Committee of Creditors, which shall comprise of only Financial Creditors of the Corporate Debtor. It is also submitted that under Regulation 24, the IRP/RP is not allowed to permit any other person to participate in the meeting of Committee of Creditors and he has to ensure that no other person is attending other than the person as provided under Sections 21 and 24 of the IBC, 2016.

7. The Resolution Professional further stated that the Advocate, Chartered Accountant and the Company Secretary of the Corporate Debtor has no right to attend the meeting of the Committee of Creditors. Under Section 17(2) (d) of IBC, the IRP/RP has the authority to access the books of accounts and other relevant documents of the Corporate Debtor available with statutory auditors, accountants and Section 19 of the IBC provides that, the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall extend all assistance and co-operation to the IRP/RP as may be required by him in managing the affairs of the Corporate Debtor. Hence, if any assistance is required by RP from the Promoters, Advocate, Chartered Accountant and Company Secretary, he shall seek their assistance as and when required. However, for the conduct of the CIRP, it is the discretion of the IRP/RP to appoint Accountants, legal and other professionals following the due process as specified by the IBBI under Section 25(2)(d) and it is also stated that RP is not permitted to disclose any information pertaining to the CIRP to any third parties including providing any documents connected with the CIRP. Hence the Applicant is not entitled to any relief.

Findings

8. I have heard the arguments advanced by the learned counsel for the Applicant and the learned counsel appearing for the Respondent/ Resolution Professional. The questions to be decided is whether an Advocate/ CA/ Company Secretary of Corporate Debtor can be permitted to attend the CoC meeting of the Corporate Debtor and whether the Respondent/ Resolution Professional has to provide the copies of all the documents in connection with the CIRP?

9. The CIRP starts with admission of an application filed by a party under Section 7 and Section 9 of IBC, 2016 and it comes to an end after the approval of Resolution Plan under Sub-Section 1 of Section 31. As per the procedure, a Committee of Creditors is to be formed under Section 21, which reads as follows: -

Section 21. Committee of Creditors. —

(1) The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

Provided that a [financial creditor or the authorised representative of the financial creditor referred to in subsection (6) or sub-section (6-A) or sub-section (5) of Section 24, if it is a related party of the corporate debtor,] shall not have any right of representation, participation or voting in a meeting of the committee of creditors: [Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date].

10,. I have also gone through the case laws submitted by the learned counsel for the Applicant to fortify his arguments:-

- *Union Bank of India Vs. Oriental Bank of Commerce (Company Appeal (AT) (Insolvency) No. 1417 of 2019.)*

- *M/s. Innoventive Industries Ltd Vs. ICICI Bank (Civil Appeal Nos. 8337-8338 of 2017).*
- *Union of India, Ministry of Corporate Affairs Vs. Infrastructure Leasing and Financial Services Limited & Ors. (NCLT Mumbai Bench in M.A. 2071/2019 in C.P. No. 3638/2018).*
- *Metaliks Limited Vs. Union of India (2017 SCC Online Cal 2749).*
- *M/s. Subasri Realty Private Limited Vs. Mr. N. Subramanian & Anr. (Company Appeal (AT) (Insolvency) No. 290 of 2017).*
- *Steel Konnect (India) Private Limited Vs. M/s. Hero Fincorp Limited. (Company Appeal (AT) (Insolvency) No. 51 of 2017).*
- *NUI Pulp and Paper Industries Pvt. Ltd. Vs. M/s. Roxcel Trading GMBH (Company Appeal (AT) (Insolvency) No. 664 of 2019).*
- *Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. (Civil Appeal No. 8430 of 2018)*

11. The circumstances under which the issue arose in the aforementioned cases are not relevant to the issue raised by the Applicant in this M.A..

12. The above finding of this Tribunal leads us to another question, as to whether any other professional can attend the meeting of Committee of Creditors without permission of the Resolution Professional? Regulation 24 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 defines "Conduct of meeting", which is akin to the issue in the present application. Regulation 24 reads this: -

Regulation 24. Conduct of meeting

- (1) *The Resolution Professional shall act as the Chairperson of the meeting of the committee.*
- (2) *At the commencement of a meeting, the Resolution Professional shall take a roll call when every participant attending through video conferencing or other audio and visual means shall state, for the record, the following, -*
 - a) *his name;*
 - b) *whether he is attending in the capacity of a member of the committee or any other participant;*
 - c) *whether he is representing a member or group of members;*
 - d) *the location from where he is participating;*
 - e) *that he has received the agenda and all the relevant material for the meeting; and*

- f) that no one other than him is attending or has access to the proceedings of the meeting at the location of that person*
- (3) After the roll call, the Resolution Professional shall inform the participants of the names of all persons who are present for the meeting and confirm of the required quorum is complete.*
- (4) The Resolution Professional shall ensure that the required quorum is present throughout the meeting.*
- (5) From the commencement of the meeting till its conclusion, no person other than the participants and any other person whose presence is required by the Resolution Professional shall be allowed access to the place where meeting is held or to the video conferencing or other audio and visual facility, without the permission of the Resolution Professional.*
- (6) The resolution professional shall ensure that minutes are made in relation to each meeting of the committee and such minutes shall disclose the particulars of the participants who attended the meeting in person, through video conferencing, or other audio and visual means.*
- (7) The resolution professional shall circulate the minutes of the meeting to all participants by electronic means within forty-eight hours of the said meeting.*

13. On a reading of the above provision makes it clear that the Resolution Professional has the power and responsibility to monitor and manage the operations and assets of the enterprise. The professional will manage the resolution process of negotiation to ensure balance of power between the creditors and debtor, in order to protect the rights of all creditors. The professional has to ensure the reduction of asymmetry of information between creditors and debtor in the resolution process.

14. To get further clarity on this issue, this Tribunal gone through Section 24 of the Insolvency and Bankruptcy Code, 2016 which reads as under:

Section 24: Meeting of committee of creditors.

- (1) The members of the committee of creditors may meet in person or by such electronic means as may be specified.*
- (2) All meetings of the committee of creditors shall be conducted by the resolution professional.*
- (3) The resolution professional shall give notice of each meeting of the committee of creditors to—*

3(a) *members of 1[committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)];*

(b) members of the suspended Board of Directors or the partners of the corporate persons, as the case may be;

(c) operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

(4) The directors, partners and one representative of operational creditors, as referred to in sub-section (3), may attend the meetings of committee of creditors, but shall not have any right to vote in such meetings:

Provided that the absence of any such director, partner or representative of operational creditors, as the case may be, shall not invalidate proceedings of such meeting.

(5) Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor] who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

(6) Each creditor shall vote in accordance with the voting share assigned to him based on the financial debts owed to such creditor.

(7) The resolution professional shall determine the voting share to be assigned to each creditor in the manner specified by the Board.

(8) The meetings of the committee of creditors shall be conducted in such manner as may be specified.

15. The above Section provides that if there are Financial Creditors to Corporate Debtor, only Financial Creditor can attend and vote in the meeting. Directors and partners can only attend the meeting of Committee but shall not have any right of voting and their absence does not invalidate any of the proceedings, which means that even if they are allowed to attend the meeting of Committee of Creditors, they will be only silent spectators and they have no say on any of the transactions in the proceedings.

16. Hence, this Tribunal is of the view that by allowing the Advocate/ CA/ Company Secretary of the Corporate Debtor no purpose will be served. The Corporate Debtor itself is sufficient to provide any of the documents/papers/details sought by the

MA/162/KOB/2020 in IBA/52/KOB/2019

Resolution Professional during the proceedings. As far, as the 2nd prayer to provide the copies of all documents in connection with the CIRP process to the Corporate Debtor is concerned, as rightly stated by the Resolution Professional it is the discretion of the Resolution Professional to appoint Accountants, legal and other professionals following the due process as specified by the IBBI under Section 25(2)(d) of Insolvency and Bankruptcy Code, 2016 and that Resolution Professional is not permitted to disclose any information pertaining to the CIRP to any third parties including Advocate/ CA/ Company Secretary this prayer also cannot be granted.

17. Keeping in view the facts and circumstances as also the above mandates, this Tribunal cannot travel beyond the IBC Regulations and pass orders contrary to the Regulations. **MA/162/KOB/2020 being devoid of merit is dismissed.**

Dated the 21st day of January, 2021

Sd/-
(Ashok Kumar Borah)
Member (Judicial)