

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

M.A.No. 1/KOB/2019

In TCP 59/KOB/2019

(CP 985/IB/2019 of Chennai Bench)

*(In the matter of Section 33(2) of the Insolvency and
Bankruptcy Code 2016)*

Order delivered on: 19.09.2019.

Coram:

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

Hon'ble Mr. Veera Brahma Rao Arekapudi, Member (Technical)

Kizhakkekara Kurakose Jose,
Resolution Professional of Seabird Seaplane Pvt.Ltd.
Registered Office Flat No.302, Block No.1
Easeland Enclave, Ernakulam,
Kochi-682020.

..... **Applicant**

*In the matter of: Federal Bank Limited ---Applicant/Financial Creditor
Vs.*

Seabird Seaplane Private Limited ---Respondent/Corporate Debtor

For applicant

... Adv. Vinod PV, Indialaw LLP

ORDER

This MA arose upon the application filed by Kizhakkekara Kuriakose Jose under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 for liquidation of the Corporate Debtor.

2. The brief facts of the case are that by order dated 27.3.2019 the NCLT, Chennai Bench admitted the application filed under Section 7 of IB Code, 2016 by the Financial Creditor ie., the Federal Bank Limited against the Corporate Debtor, Seabird Seaplane Private Limited and appointed the applicant herein as the Interim Resolution Professional. In pursuance to the aforesaid order, the applicant has made



announcement on 29.3.2019, in accordance with Section 15 of the Code in the newspapers Mathrubhumi and Sunday Express and also on the website of the Insolvency and Bankruptcy Board of India. The applicant has received claims from Financial and Operational Creditors and a list of claims received as on 13.4.2019 is furnished below. The applicant also filed a report of the formation of the committee dated 19.4.2019 before this Tribunal and first meeting of the Committee of Creditors (CoC) was held on 29.4.2019. The CoC unanimously resolved and appointed the applicant as a Resolution Professional. The Minutes of the first CoC meeting dated 29.4.2019 with list of claims are as follows:

Financial Creditors	Claim Amount	Claims admitted	Voting Share
Federal Bank	59,854,596.00	59,854,596.00	81%
MIV Logistics Pvt.Ltd	41,778,832.00	41,778,832.00	Related Party
Keshavam Muraleedharan	14,373,836.00	14,373,836.00	19%
Cochin International Aviation Services Ltd.	1,081,770.00	1,081,770.00	Nil
Total Claim	117,089,034.00	117,089,034.00	

As per MCA website the Corporate Debtor has their Registered Office at Flat No.302, Block I, Easeland Enclave, Elamkulam, Kochi-682020. The applicant visited the office for inspection on 31.3.2019. However, it was found locked. In spite of the applicants repeated attempts the applicant could not get access to the books of account, statutory register and other records of the Corporate Debtor. As per MCA website there are two Directors to the Corporate Debtor Mr.Suraj Jose and Mr.Sudheesh George. The applicant also intimated the said Directors about the initiation of CIRP and appointment of the applicant as an R.P. In the first CoC Mr.Sudheesh George was present and other Director Mr.Suraj Jose who is in control of the administration and upto date affairs of the Corporate Debtor was absent. Mr.Sudheesh George informed the CoC that the company is in deadlock, he is not involved in the activities of the Corporate Debtor and no Board meeting has been convened of late and all the current activities of the Corporate Debtor are solely handled by Mr.Suraj Jose. In view of the non-cooperation from the respondents and not providing the financial statements



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the last two years, the assets and liability position of the Corporate Debtor as on CIRP commencement date, IRP expressed his inability to complete all the duties of Resolution Professional as provided under Sections 17 and 18 of the Code to the CoC. The applicant has also sent email on 31.3.2019 and on 1.4.2019 seeking information from Mr.Suraj Jose, however, he did not provide the details. The applicant also informed the CoC that appointment of the valuers and preparation of information memorandum can be done only when the records of the Corporate Debtor are made available to IRP. Because of the non-cooperation, the applicant has filed MA 564/2019 before the NCLT,Chennai Bench under Section 19 of the Code seeking necessary direction against the non-cooperating Director Mr.Suraj Jose to provide with the financial information and all other details pertaining to the Corporate Debtor and cooperate with the CIRP. Accordingly on 24.6.2019, 28.6.2019 and 3.7.2019 the Tribunal issued directions to the Director to hand over the records of the Corporate Debtor and to file an affidavit of compliance by 11.7.2019. On 11.7.2019, Mr. Suraj Jose was personally present in the Tribunal at Chennai and agreed to hand over the documents by 12.7.2019. However, he did not comply with the direction of the Tribunal,. Hence the Tribunal on 16.7.2019 issued a further direction to Mr. Suraj Jose to personally present before the NCLT Chennai Bench. Thereafter the matter has been transferred to this Bench.

3. The applicant has sent an email on 4.7.2019 with a list of requirement to the Director. However, he replied to the said email on 7.7.2019 in an evasive manner without providing any required information. He has also submitted that the second CoC was convened on 29.7.2019 and in that meeting Mr.Suraj Jose was personally present. The CoC also directed Mr. Suraj Jose to submit all documents to the applicant by 31.7.2019 in order to continue the CIRP. The Corporate Debtor has commenced its business as a non-scheduled Air Taxi Service and its major asset is a 10 seater Kodiak Seaplane Aircraft purchased from US and it is also one of its kind In India and which is brought with the financial assistance from the Financial Creditor.

However the Corporate Debtor failed to obtain necessary licence, permits and approval for commencing its business and hence it did not commence its commercial



operation. The seaplane is parked at International Airport, Kochi without any maintenance and insurance. Operational Creditor has also raised its claim for parking fee. The Corporate Debtor has no pilot, engineers technicians or any other employees on its role. There are no further major assets to the Corporate Debtor as per financial record of 2015-16 and provisional financials of 2016-17. In the second CoC meeting when the Director Mr. Suraj Jose was present personally, the applicant brought to the notice of the members of the CoC regarding the facts and the CoC took a note that if non-cooperation continues it would prefer to go for liquidation considering the commercial aspects of the Corporate Debtor. The third COC meeting was convened on 6.8.2019 where the applicant informed the CoC that it had contacted the Auditor Mr.Suresh for handing over the books of account of the Corporate Debtor as informed by Mr.Suraj Jose. However the auditor informed the applicant that he has not received any documents from Mr. Suraj Jose. Therefore, the Director Mr.Suraj Jose was completely misleading the applicant the CoC and had no intention to bring any resolution to the Corporate Debtor.

4. After due deliberation, the COC unanimously decided to liquidate the Corporate Debtor in order to maximise the value of its assets as it has taken a view that any further delay would deteriorate the value of the assets of the Corporate Debtor. The major grounds which led the CoC to take a decision for liquidation are as under:

- A) *The Corporate Debtor was incorporated on 1.11.2012 and has not started its commercial operation for the reason that it has not obtained required permits and licenses from DGCA and from other statutory bodies for operating the seaplane.*



- B) *The Corporate Debtor has not convened Board meeting for the last three years as revealed by Mr.Sudheesh George, another director and the directors are not in talking terms.*
- C) *The Corporate Debtor has not filed annual returns since 2017.*
- D) *The promoter/suspended director has not cooperated with the CoC despite CoC/RP put all efforts to keep the Corporate Debtors as a going concern.*
- E) *The Corporate Debtor has not made any arrangement for renewal of the insurance to the Seaplane Aircraft despite CoC assured to arrange finance for the same.*
- F) *Without cooperation of suspended directors/promoters, obtaining the statutory license for commercial operation and further obtaining a successful resolution plan as a going concern, is remote.*
- G) *The Corporate Debtor has no office premises, staff and permanent employees.*
- H) *The trained technicians, engineers and pilot are not available in India to maintain the Aircraft.*
- I) *The Engine of the Aircraft is kept idle without weekly/monthly operation hence it must be serviced to make it operating condition, which requires huge expenses.*
- J) *The value of the aircraft is eroding day by day hence for the interest of the stake holders the asset (Aircraft) must be sold off at the earliest.*
- K) *There is no cash flow and foreseeable cashflow to the Corporate Debtor as Corporate Debtor has not shown any interest to carry out the business further.*

In the third meeting of CoC which was held on 6.8.2019, with 100% voting right, CoC approved the decision to liquidate the Corporate Debtor. As an interim protection to the assets of the Corporate Debtor, the Financial Creditor, Federal



Bank Limited has informed the CoC that it shall arrange fund to renew the insurance policy and applicant is given direction to make necessary arrangement for the same. In view of the non-cooperation from the promotor/Director of Corporate Debtor and not providing books of accounts, the total documents of the asset, the CoC and the applicant could not conduct valuation and ascertain the liquidation value of the company. Hence the applicant filed this petition with the prayers:

- (a) Pass an order under Section 33(2) of the Code for Liquidation of the Company; and
- (b) Appoint the Resolution Professional as Liquidator of the Corporate Debtor;
- (c) Provide police assistance to the Resolution Professional/Liquidator take custody and control of the records of the Corporate Debtor.

5. We have thoroughly perused all the case records including the exhibits ie., Petition under Section 7 of the Insolvency & Bankruptcy Code read with Rule 4 of Bankruptcy Rules, 2016, order passed by Hon'ble Chennai Bench of NCLT (Ext.1), Master Data of the company (Ext.2), public announcement (Ext.3), Minutes of the Frist CoC (Ext.4), Email sent on 31.3.2019 (Ext.P5), order passed by the NCLT Chennai bench on various dates in MA 546 of 2019 and other communication between the parties.

6. Section 33(2) of the Insolvency and Bankruptcy Code 2016, which is as follows:

“Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors *[approved by not less than sixty-six per cent. of the voting share]* to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).



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²[Explanation. – For the purpose of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.]”

7. After considering all the above aspects, we pass the following order:-
- Liquidation of the Company under Section 33(2) of the Insolvency and bankruptcy Code;
 - Appointing the Resolution Professional as Liquidator of the Corporate Debtor; and
 - We also direct the police authorities concerned, to provide assistance to the Resolution Professional/Liquidator to take custody and control of the records of the Corporate Debtor.
8. With the above directions, this M.A is disposed off.

Dated the 19th day of September, 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

Memo No. MA/1/KOB/2019/.....521

Date: 20.09.2019

To

Advocate Vinod P.V, India Law LLP, 66-1058, First Floor,
Veekshanam Road, Ernakulam North, Cochin-682018.

