IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH
KOCHI

IA(IBC)/230/KOB/2022
IN
CP(IB)/05/KOB/2021

(Under Section 19(2) of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

K. Parameswaran Nair, Resolution Professional, Samson and Sons Builders and Developers Pvt. Ltd., 37/1736E, Kripasagaram, K. Murali Road, Kadavanthra, Ernakulam, Kerala- 682 020. Email: cakpnair@gmail.com;

... Applicant

-Versus-

1. Mr. Jacob Samson, TC 95/1580(3), Nandanam, Padinjattil Lane, Medical College P.O., Thiruvananthapuram- 695 011. Email: jacobsamsonmuttada@gmail.com;

2. Mr. John Jacob, TC 95/1580(3) Nandanam, Padinjattil Lane, Medical College P.O., Thiruvananthapuram- 695 011. Email: samsonmuttada@yahoo.co.in;

3. Mr. Samuel Jacob, TC 95/1580(3) Nandanam, Padinjattil Lane, Medical College P.O., Thiruvananthapuram- 695 011. Email: director.samsonandsons@gmail.com;

... Respondents

-And-

In the matter of:

Vijayakumaran J;

... Operational Creditor

-Versus-

Samson and Sons Builders and Developers Pvt. Ltd.

... Corporate Debtor

Coram:

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

Appearance through Video Conferencing

For Applicant	:	M/s. Indialaw LLP, Advs.
For Respondent	:	M/s. S. Sreekumar Associates, Advocates

Order reserved on: 11.11.2022
Order pronounced on: 22.12.2022

O R D E R

1. The present application is filed by the Resolution Professional, under Section 19(2) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") seeking reliefs mainly to the following effect: -

   a) *To direct Respondents No.1 to 3 to furnish all relevant information pertaining to the Corporate Debtor and more specifically stated in Para 5.5 of this Application forthwith; and*

   b) *Direct Respondents No.1 to 3 to cooperate with the Resolution Professional and furnish all information sought by the Resolution Professional during the CIRP of the Corporate Debtor.*

2. The facts as narrated in the application and explained by the Applicant are summarized hereunder:

   i. This Adjudicating Authority vide order dated 03.11.2021 in CP (IB)/05/KOB/2021, admitted the application filed by Mr. Vijayakumaran J, VJ Constructions against the Corporate Debtor M/s Samson and Sons Builders and Developers Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 and appointed Shri Mohammed Davood Cmk as IRP. Since Shri Mohammed Davood Cmk intimated his unwillingness to take charge as IRP, this Adjudicating Authority vide order dated 12.11.2021 replaced him with Mr. Lukose Joseph as IRP. However, in the 2nd CoC held on

10.01.2022, the CoC resolved to appointed the Applicant, K. Parameswaran Nair as the Resolution Professional and this Adjudicating Authority confirmed the appointment vide order dated 16.03.2022 in IA(IBC)/14/KOB/2022.

ii. Even after lapse of 140 days from the commencement of CIRP, the suspended directors have not provided the requisite details and information and records pertaining to the Corporate Debtor for the conduct of the CIRP. The Applicant has sent several communications to the suspended directors i.e., on 07.05.2022, 11.05.2022, 31.05.2022, 06.06.2022, 12.06.2022, 15.06.2022, 21.06.2022, 16.07.2022, 06.07.2022, 13.7.2022, 18.07.2022 and 10.08.2022 and also made several telephone calls to the suspended directors, however, till date complete information pertaining to the Corporate Debtor was not provided by the suspended directors. The Resolution Professional has requested the Respondents to provide the following documents for updating the information memorandum in order to obtain the resolution plans for the Corporate Debtor and also for the purpose of determination of the avoidance transactions:

a) Minutes book of Annual General Meeting, Extraordinary General Meeting and Board Minutes.
b) Pending Bank Account statements as follows:
    - SBI-7133 -- 2010-2011 to 2014-2015
    - Federal Bank- 3614 -- 2011-2012 to 2014-2015
    - Axis Bank- 6167 -- 2012-2013 to 2014-2015
    - PNB-7134 (Current Account) --2013- 2014 to 2014-2015

- PNB-OD-457 -- 2013-2014 to 2014-2015
- ICICI Bank- 1191 -- 2014-2015 to 2015-2016
- IndusInd Bank -- 2014-2015
- Karur Vysya -- 2014-2015
- SBI- 4884 -- 2014-2015
- SBI- 7133 -- 2014-2015

c). Fixed Asset Register with detailed list of assets, location, conditions etc.

d). Audited Financial Statements for the period from FY 2015-2016 to 2021-2022 duly signed by the Directors during that period M/s. Samson Jacob (Chairman), John Jacob (MD) and Samuel Jacob (Director)

e). Compliance list on account of the TDS filing, GST Returns, ROC filing, Income Tax Returns etc.

f) Project details:

- Project wise allottee register
- Project-wise AUTOCAD drawings for all sites except Nova Castle and Angel Woods Projects.
- Details regarding the Green Courtyard Project, ownership and other title documents.
- Proof and details of payments on account of Joint Development Agreement to the landowners.

g) Major loan case documents

- Complete KFC loan documents along with sanction letter, compliance register etc.
- Loan documents from Muthoot along with order passed under SARFAESI Acts.

- Status of the details of the documents with Crime Branch, Enforcement Directorate and Police Departments.

iii. Though the Applicant has invited expression of interest from 10th June 2022, the Prospective Resolution Applicants are unable to submit the detailed proposal for submission of a resolution plan for want of the above details/documents. The Applicant has appointed Forensic auditors for examining the avoidance transactions and also IBBI Registered Valuers for conducting the valuation. In view of the non-furnishing of the relevant documents pertaining to the Corporate Debtor, the said examination and valuation are also pending.

iv. It is further stated that the Corporate Debtor is in the business of real estate development and there are currently 10 projects under development. Out of 10 projects, five projects are nearly on completion. The Applicant has not received the-complete information pertaining to the Corporate Debtor and without furnishing complete details with respect to the project and the transactions of the 'Corporate Debtor, the prospective resolution applicants could not file their proposal. The non-cooperation of the suspended directors is causing great difficulty for completing the CIRP. Since the IBC is a time-bound process any delay in providing the details may result in a liquidation of the Corporate Debtor.

3. On 20.09.2022, the Respondents filed their reply statement. The Respondents stated that they were arrested by the Police during October 2016 and criminal charges were raised against the close relatives as well. During this time the staff of the Corporate Debtor company were not attending the office. While the Respondents were under custody/remand, the offices of the Corporate Debtor company

were ransacked by the customers and other anti-social elements and almost all the documents and valuables were taken away. Most of the movable assets and records of the Corporate Debtor were lost. During this time, the Crime Branch and Police, conducted searches in the office and premises belonging to the Corporate Debtor company and seized several documents, computers and hard disks etc. In view of this some of the details documents sought by the Resolution Professional could not be handed over as they are not in possession of the Respondents at present. Hence the Respondents are unable to provide those details/documents. Respondents have submitted the item wise reply to the documents sought for by the applicant as under:-

a) **Minutes book of Annual General Meeting, Extraordinary General Meeting and Board Minutes: -**
   Though the minutes books were being maintained in the office as per statutory requirements, they were lost while the Respondents were under custody and the offices of the Corporate Debtor were ransacked. The Respondents made a detailed search of the office and enquired with the staff after their release on bail, despite the best efforts the minutes books sought could not be traced. Due to the various criminal cases and other litigations, the Corporate Debtor company was not functioning and the meetings of the Corporate Debtor could not be conducted as per statutory requirements subsequently.

b) **Pending bank account statements:**
   The bank statements pertaining to the period prior to 2016 were lost during the ransacking of the Corporate Debtor Company's office during October 2016. The account statements from 1) State bank of indie; 2) Federal Bank; 3) Axis bank; 4) Punjab National Bank, and Karur Vysya Bank

were collected from the respective banks and forwarded to the Resolution Professional on 24.08.2022 and 25.08.2022. However, other banks have rejected the request to provide the bank statement for the required periods on the ground that the Respondents have no authority to seek the same since the Resolution Professional is appointed. it was further informed that the said banks viz. ICICl and IndusInd Bank will be willing to share the said details to Resolution Professional.

c) **Fixed Asset Register with a detailed list of assets, location, conditions etc.:**

The physical fixed asset registers are missing since the ransacking of the Corporate Debtor's office. The list of assets that are available was shared with the Resolution Professional vide email dated 21.07.2022.

d) **Audited financial statements for the period from FY 2015-16 to 2021-2022 duly signed by the directors during that period Samson Jacob (Chairman), John Jacob (MD) and Samuel Jacob (Director):**

For the reasons mentioned above the Corporate Debtor was undergoing genuine hardship and was not in a position initiate or complete the audit from Financial Year 2015-2016 onwards. On appointment of auditor by the Resolution Professional the draft financial statements have been prepared and shared with the Resolution Professional for the purpose of resolution.

e) **Compliance list on account of the TDS filing, GST Returns, ROC filing, Income Tax Returns etc;**

All compliance filings were handled by the employees of the Corporate Debtor company. However, since the ransacking of the office of the Corporate Debtor, the employees have stopped attending the office. The Respondents are taking their best efforts to recover the login credentials for the statutory filings and to share them with the Resolution Professional.

f) Project details:

- **Project allottee-wise register:**

  The project allottee-wise register was shared with the Resolution Professional along with the draft financial statements.

- **Project-wise AUTOCAD drawings for all sites except Nova Castle and Angel Woods projects:**

  The AUTOCAD drawings of the projects were shared with the Resolution Professional vide emails on the following dates.

  Orchid Valley - 12.07.2022

  Sanctuary – 19.08.2022

  Sharon Hilts Phase I – 12.09.2022

  Sharon Hilts Phase II- 11.06.2022

  Pearl Crest -11.06.2022

  Merry Land – 12.06.2022

  Selene – 11.06.2022

- **Details regarding the Green Courtyard project, ownership and other title documents:**

  The title documents of the project were emailed on 02.06.2022 and the Memorandum of Understanding and the Power of Attorney were emailed on 23.07.2022.

- **Proof and details of payments on account of the Joint Development Agreement to the land owners:**

  The details of the payments made to every landowner is clearly marked in the books of accounts shared with the Resolution Professional.

g) Major loan case documents:

- **Complete KFC loan documents along with sanction letter, compliance register etc.**

- **Loan documents from Muthoot along with order passed under SARFAESI Acts:**

  A statement regarding the loan availed from Muthoot was sent by email to the previous Resolution Profession Sri. Lukose Joseph on 30.01.2022. The Respondents are now not in possession of any other documents regarding the loan availed from Muthoot in View of the circumstances mentioned above. However, the documents in relation to the loan availed from KFC has been sent to the resolution professional vide email dated 26.08.2022.

- **Status of details of documents with crime branch, enforcement directorate and other police departments:**

  The Respondents are not in possession of the details of the documents in the custody of the crime branch and the police. The search and seizures were conducted while the Respondents were under arrest and were not issued with seizure mahazars.

4. The Respondents further stated that they are ready and willing to cooperate and undertakes to provide any other details/information which could not be provided earlier to the Resolution Professional as soon as they receive the same.

5. On 10.11.2022, the Applicant filed an affidavit and stated that this Adjudicating Authority vide order dated 23.09.2022 directed the applicant to provide the details of what all documents to the learned counsel for the respondents, which the applicant has done. Respondents only gave some partial information on the ground that the documents were taken custody by the Police Officers and since they were in jail the office was ransacked. However, the respondent

did not produce any mahazar prepared by the police while taking into custody of the documents.

6. According to the applicant, the following documents are essential for the revival of the Corporate Debtor: -

   a. Minutes Book of Annual General Meeting, Extraordinary General Meeting and Board Minutes.
   b. Fixed Asset register with detailed list of assets, location, conditions etc.
   c. Audited financial statements for the period from FY 2015-2016 to 2021- 2022 duly signed by the Directors.
   d. Details for filing such as username, password of TDS filing, GST returns, ROC filing.
   e. Project details:
      a. Project wise allottee register
      b. Project wise AUTOCAD drawings of Sharon hills 1.
      c. Proof and details of payments on account of the Joint Development agreement to the landowners.
   f. KFC loan documents.
   g. Loan documents relating to Muthoot Fincorp Ltd.
   h. Details of the documents with Crime Branch, Enforcement Directorate and Police Departments and case references to collect a copy.
   i. Tally data of 2014-2015.
   j. Details of material litigation statement relating to 204 cases against the company.
   k. Original of the Joint Development Agreement, sale deed, and MOU with the landowners.
   l. Details Regarding duplicate allotment of flats - 3 cases identified in Nova Castle Sharon Hills 1-1 case 1 A2
   m. Reply to first draft Forensic Audit report.

n. Approved Plans of Pearl Crest, Green Court Yard, and other projects and Collection of Funds/ advances from Investors without approval and /or even after the expiry of Approvals etc
o. Original Documents in relation to the Sanctuary Project, and Missing documents relating to 51.89 Cents of Land and other projects.
p. Contact details of the staff who handled the Accounts, Secretarial Matters, MCA/ROC matters etc.
q. In the case of Merry Land Project -Details of Land transaction, Purchases, Sales, JDA, Allotment of Flats to Landowners, payments for receipts issued, Revenue recognition for creating reserves for Bonus issue etc, Actual sale documents to Mr. Mohan Kumar and Smt Sasikala after allotting flats. Details regarding the collection of advances from 6 allottees Rs. 3,60,00,000 and receipt issued for them based on which income is recognised for allotment of Bonus Shares.

7. The Applicant further stated that the non-furnishing of the information is fatal to the CIRP and it is misconduct on the part of the suspended directors and the reason stated by the suspended directors for not providing the information is not bonafide, hence it is to be presumed that suspended directors are deliberately not providing the information to the Applicant.

FINDINGS: -

8. We have heard the learned counsel for the Applicant Mr. Vinod P.V along with the Applicant/ Resolution Professional Mr. K. Parameswaran Nair and the learned counsel for the Respondent Mr. Thomas P.Kuruvila and perused the entire case records/documents. In order to arrive at a decision in the matter, we have gone through Section 19 of IBC, 2016, which is reproduced below: -.

Section 19: Personnel to extend cooperation to interim resolution professional.

19. (1) 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 cooperation to the interim resolution professional as may be required by him in managing the affairs of the corporate debtor.

(2) Where any personnel of the corporate debtor, its promoter or any other person required to assist or cooperate with the interim resolution professional does not assist or cooperate, the interim resolution professional may make an application to the Adjudicating Authority for necessary directions.

(3) The Adjudicating Authority, on receiving an application under sub-section (2), shall by an order, direct such personnel or other person to comply with the instructions of the resolution professional and to cooperate with him in collection of information and management of the corporate debtor.

9. By Way of this Interlocutory Application the applicant/ RP voices his grievances against Respondents who are the suspended directors that they are not co-operating for the smooth conduct of CIRP and are not providing the information sought for by him. The information/documents sought for are enlisted in the earlier paragraph of this order. The Applicant even though requested the Respondents through various communications dated 07.05.2022, 11.05.2022, 31.05.2022, 06.06.2022, 12.06.2022, 15.06.2022, 21.06.2022, 16.07.2022, 06.07.2022, 13.7.2022, 18.07.2022, 10.08.2022 and 24.10.2022, till date the applicant has not received any information from the Respondents. This Adjudicating Authority on 19.10.2022 directed the Respondents to provide the remaining documents/ information but the respondents stated the reason that when they were in jail/custody all the documents were ransacked and which was reported to the police authorities. However, they could not produce any mahazar from the police authorities as to whether they have reported to the police or not. Hence, it can be presumed that it is only an excuse from their side not

to produce the documents called for by the Resolution Professional. However, in the reply statement, the respondents undertook to provide all information to the applicant.

10. In this respect it may be noted that due to a lack of information, the Applicant/Resolution Professional is not able to perform the duties contemplated in Sections 17, 18and 25 of the IBC, 2016. It is incumbent on the Respondents to extend co-operation and to ensure that the RP functions and conducts the Corporate Insolvency Resolution Process in terms of the provisions of the IBC, 2016. Accordingly, we direct all the Respondents to co-operate with Applicant/Resolution Professional and provide all the information/documents/clarifications sought for by the applicant Resolution Professional within a period of two weeks from the date of receipt of a copy of this order. It is made clear that failure to do so will attract the provisions of Section 70 of IBC, 2016.

11. Ordered accordingly and IA(IBC)/230/KOB/2022 stands **ALLOWED**.

12. Registry is directed to communicate this order to the respective parties through email.

13. Certified copy of the order be issued on request of the parties as per the procedure.

14. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD Date: 2022.12.22 14:49:55 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ Date: 2022.12.22 14:19:09 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this 22nd day of December 2022

Rajasree