

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

IA(IBC)/79/KOB/2021

In

TIBA/07/KOB/2019

(Under Section 60(5)(a) and 60(5)(c) of IBC, 2016)

Order delivered on: 07.07.2021

Coram:

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

Hon'ble Mr. Rajesh Sharma, Member (Technical)

In the matter of:

C A Jasin JoseApplicant
Liquidator of Sargam Builders Pvt. Ltd.
IBBI Reg Address
Ponmattam Madaserry,
Mookkannoor P. O.- 683577,
Angamaly.

Versus

1). Mr. V. K. Abdul Rahim Respondents
Suspended Managing Director,
M/s. Sargam Builders Pvt. Ltd., (Under Liquidation),
2813858-D, Sargam House,
Waterland Road, Elamkulam,
Cochin, Kerala- 682020.
2). Mr. C A Sen George FCA,
Head Office: Shreyas Flat No. B1, Cheruparambath Road,
Kadavanthara, Kochi- 682020. (Deleted vide order dated 07.07.2021 in this IA)

For applicant ... Mr. Jasin Jose, Liquidator in person.

For Respondent No.1 ... Mr. Babu Karukapadath.

ORDER

This IA/(IBC) 79/KOB/2021 has been filed by the Liquidator of M/s. Sargam Builders Private Limited under Section 60(5)(a) and 60(5)(c) of Insolvency and Bankruptcy Code,2016 (hereinafter referred as I&B Code,2016) seeking the following directions: -

- (i) Direct the suspended Managing Director to collect back and handover the cheque book and other account opening details provided by the bank on opening the Liquidation account provided by the bank.
- (ii) To appoint an Independent auditor for the period of 2019-2020 and for the updating the accounts for the period up to Liquidation. Therefore, to direct the suspended directors and existing auditor to handover all the records and information for the same.

2. In the Application it is stated that this Tribunal vide order dated 16.09.2020 allowed the liquidation application IA/129/KOB/2020 and appointed the applicant herein as the Liquidator of the Corporate Debtor. Section 41 of Chapter VII of Liquidation Regulation of IBC 2016 states that: -

All money to be paid in to bank account.

- 1) “The Liquidator shall open a bank account in the name of the Corporate Debtor followed by the words ‘in liquidation’, in a scheduled bank, for the receipt of all moneys due to the Corporate Debtor.
- 2) The Liquidator shall deposit in the bank account opened under sub-regulation (1) all moneys, including cheques and demand drafts received by him as the Liquidator of the Corporate Debtor, and the

realizations of each day shall be deposited into the bank account without any deduction not later than the next working day”.

3. It is also stated that Applicant-Liquidator has opened an Account for the Corporate Debtor with the Federal Bank Ltd, Always in the name of “Sargam Builders Private limited”- in liquidation. The new cheque book and account details which was despatched by the Federal Bank, has been received by the suspended Managing Director, who wrote a letter to the Bank to close the account vide letter dated 21.11.2020.

4. In the reply filed by the Respondent, it is stated that he has not stated that the account was opened by the Applicant by practicing fraud. The case of the Respondent is that the order of Liquidation was obtained by the Applicant by practicing fraud and was attempting to open the account by using the fraudulently obtained order. It is also stated that since the Respondent never opened a new account in the Federal Bank, when the cheque books were received by him from the bank, it was promptly returned to the bank.

5. On 23.04.2021 while the matter was taken up for hearing the learned Liquidator submitted that he is not insisting the 2nd prayer to appoint an Independent Auditor for the period of 2019-2020 for updating the accounts for the period up to Liquidation and consequently he wants to delete the name of 2nd Respondent/Chartered Accountant from this IA and the relief (ii) mentioned above. This Tribunal considered this submission and allowed the request of the Liquidator. Thereby the name of 2nd Respondent and prayer (ii) stands deleted.

6. We have heard the arguments advanced by the liquidator and learned counsel appearing for the Respondents through video conferencing. It is true that as per Regulation 41 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, the Liquidator shall open a bank account in the name of the Corporate Debtor followed by the words “in liquidation”. Since the

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Liquidator himself has opened an account in the name of Corporate Debtor in liquidation, it is the duty of the Liquidator to operate the account. It is not for this Tribunal to advise him how the Liquidator to operate the account by obtaining the cheque books etc.

7. With the above observation, IA(IBC)/79/KOB/2021 stands dismissed

Dated this the 7th day of July 2021

Sd/-
(Rajesh Sharma)
Member (Technical)

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