

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

IA (IBC) No. 23/KOB/2021

in

TIBA/24/KOB/2019

*(Under Sections 35(n) and 60(5)(c) of the Insolvency and Bankruptcy Code,
2016)*

Order delivered on: 24th day of February, 2021

Coram:

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

Applicant/Liquidator

Adv. Sankar P Panicker,
Panicker & Panicker, Advocates
Jaikunj, Chittoor Road,
Kochi-682035.

Respondents

1. M/s Orion Kuries and Loans Private Limited
(in Liquidation), Ecomark Building,
TB Road, Kokkala, Thrissur.21.
2. The Registrar of Companies,
Company Law Bhawan, BMC Road,
Thrikkakara, Kakkanad, Kochi-682021.

Parties/Counsel present (through video conference)

For applicant : Advocate Sankar P Panicker, Liquidator
For Respondents : No representation

ORDER

The Applicant is the Liquidator appointed by the National Company Law Tribunal, Chennai Bench by order dated 15.01.2018 in the matter of M/s. **Orion**

Kuries and Loans Pvt. Ltd. (Corporate Debtor), a registered private limited company having its CIN (Corporate Identity Number) as U65992KL1996PTC011021 and having its registered address at Ecomark Building, TB Road, Kokala, Thrissur. The Liquidation Order under section 33(1)(a) of Insolvency and Bankruptcy Code 2016 (IBC) was issued after the failure of Corporate Insolvency Resolution Process as laid down in the IBC. The time limit for completion of Liquidation was 2 years which was later amended to be completed in one year. Thereafter, this Tribunal through its order dated 20th January 2020 extended the liquidation proceedings till 15.01.2021. This application was filed by the Liquidator for the following reliefs:

- i. To extend the liquidation proceedings for another one year from 15.01.2021 to 15.01.2022.
 - ii. To allow private sale of 9 cents owned by the company to Sh. Mishael Jose for a price of Rs 6 lakhs arrived at by reducing 25% from the Reserve price of Rs 8 lakhs, as certified by the Registered Valuer in compliance with IBC 2016 and sub Clause 4(A) of Clause 1 of the Schedule- I of The Ibbi (Liquidation Process) Regulations, 2016.
 - iii. To direct Registrar of Companies, Kerala and Lakshadweep to record the address of the liquidator Viz., “Panicker and Panicker Advoeates, 64/768, Jaikunj, Chittoor Road, Ernakulam, Kochi - 682035” as the address for communication of the company in the records of MCA.
2. The learned Liquidator submitted that the Liquidation process in the last one-year was disrupted and only few major activities only could be done

due to the lockdown restrictions imposed by State and Central Governments. It is submitted that a Suit was filed before the Honourable Munsiff court, Thrissur for recovering the due of Rs. 5.24,440/- from T Rajesh who is the debtor of the company and that an appeal has been filed before the Honourable High Court of Kerala for dismissing the order of Dy. Labour Commissioner directing the company to pay Rs. 17,240/-, as such payment will be against the provisions of the IBC 2016.

3. The learned Liquidator further submitted that during the past three e-auctions, no response has received for the land owned by the company. The land has been capitalised in the books of the company through auction conducted through Sub-Court, for recovering the dues from loan taken by Late Chacko Puthokkaran and Sherly Puthokkaran. Due to the constant efforts, one of the family members of the has shown interest in buying the said property through private sale.

4. It is stated that the Regulations allows the Liquidator to reduce the reserve price by 25% and also seek the direction of the Tribunal to conduct private sale in the event of no sale happening after E-Auctions. The land in question consists of 9 cents, which has been categorised as wetland in the government records and there exists certain legal restrictions with regard to filling of such properties as per prevailing provisions. This restriction coupled with general down turn in the economy due to Lock down due to covid had

detrimental effect on selling the assets. In order to validate the current market price, registered valuers were again appointed. The total Liquidation value and Fair market value of the 9 cents land as certified by the Registered valuers was Rs. 8 lakhs. This amount is less to the tune of Rs 90,000/- from the earlier total reserve price certified by the Valuer of Rs 8.91 lakhs.

5. It is submitted that there were no much enquiries in the past one-year and the prospective buyer has shown interest only due to personal reasons as the land belonged to their family. The Letter of Sh Mishael Jose shown his interest to buy the asset at a price of Rs. 6 lakhs. The Regulations allow reducing the reserve price by 25% from the Liquidation value certified by the Registered Valuer and it is recommended that the offer from Sh Mishael Jose can be accepted subject to the approval of this Tribunal.

6. As regards the third prayer, the learned Liquidator submitted that the company has been occupying the building on rental basis from October 2019, after the same was sold through public auction. As payment of rent would add to the cost of liquidation, it has been observed that the premises shall be vacated for the best interest of the liquidation process. It is further submitted that till the time of final stage of Liquidation, the Liquidators address shall be kept as the communication address of the company in the records of the Ministry of Corporate Affairs.

7. I have heard the learned Liquidator in this matter and perused the documents submitted by him. For considering the prayer of mode of sale, Regulation 33 of IBBI (Liquidation Process) Regulations, 2016 may be referred to, which reads as follows:

“33. Mode of sale.

(1) The liquidator shall ordinarily sell the assets of the corporate debtor through an auction in the manner specified in Schedule I.

(2) The liquidator may sell the assets of the corporate debtor using private sale in the manner specified in Schedule I when-

(a) the asset is perishable;

(b) the asset is likely to deteriorate in value significantly if not sold immediately;

(c) the asset is sold at a price higher than the reserve price of a failed auction; or

(d) the prior permission of the Adjudicating Authority has been obtained for such sale:

Provided that the liquidator shall not sell the assets, without prior permission of the Adjudicating Authority, by way of private sale to-

(a) a related party of the corporate debtor;

(b) his related party; or

(c) any professional appointed by him.

(3) The liquidator shall not proceed with the sale of an asset if he has reason to believe that there is any collusion between the buyers, or the corporate debtor's related parties and buyers, or the creditors and the buyer, and shall submit a report to the Adjudicating Authority in this regard, seeking appropriate orders against the colluding parties.”

8. Admittedly, in this case, Liquidator had stated that the first e-auction was held on 26.04.2019, in which no bidders were shown their interest. The second

round of e-auction was held on 26.06.2019, even though one bid was received, the transaction could not be done due to technical issues. Based on the direction from NCLT, Chennai Bench, another round of e-auction was conducted on 09.08.2019. The sole bidder had given separate bid as laid down in public notice for three shop rooms only. Other assets of the company have no bidders for the second and third e-auction sale. A newspaper advertisement regarding the sale of the property was given on 18.01.2020 in the Malayala Manorama daily. The response to the same was also poor. It is further stated that he had sent letters to the creditors to know whether they are interested in buying the same by setting of the dues payable to them. One of the prospective buyer showed willingness to buy the property in private sale for a lesser value.

9. During the hearing on 27.01.2021, this Tribunal finds that the Liquidator has not attached any document to show that the 9 cents of land is owned by the Company. The liquidator has also not produced the valuation certificate issued by the valuer. The liquidator was therefore, directed to file an affidavit with proof, within a week with regard to the ownership of 9 cents of land and the certificate of the valuer on the value of the aforesaid 9 cents. The liquidator was further directed to include in his affidavit the details of the present assets of the Corporate Debtor including movable and immovable properties and its value. The Liquidator submitted the additional documents on 01.02.2021. This Tribunal perused the document pertaining to the 9 cents of

land and found that the said land is owned by the Company. On verification of the valuation report, it is seen that the valuer has valued the land value as Rs. 8,00,200/-. I have also gone through the list of present assets of the Company.

10. Considering the present circumstances of the case, on examining the 12th progress report filed by the Liquidator and the provisions under Regulation 33 of IBBI (Liquidation Process) Regulations, 2016, this Tribunal is of the opinion that it is necessary to aid the Liquidator in the process of fulfilling his duties in the process of the Corporate Insolvency Resolution. Hence, the reliefs sought by the Liquidator is to be allowed.

11. In view of the above findings, this Tribunal extends the liquidation proceedings in the matter of M/s. Orion Kuries and Loans Private Limited for another one year from 15.01.2021 to 15.01.2022. For the detailed reason stated above regarding non-availability of prospective buyers of the land in question, i.e., 9 cents owned by the Company, the liquidator is permitted to sell the said 9 cents to Sh. Mishael Jose for an amount of Rs. 6 Lakhs, strictly following the IBC Regulations, 2016 and Sub Clause 4 (A) of Clause I of Schedule I of the IBBI (Liquidation Process) Regulations, 2016. As regards the third prayer for a direction to RoC, this Tribunal directs the ROC, Kerala to record the address of the Liquidator in the matter of M/s Orion Kuries and Loans Private Limited as "Panicker and Panicker, Advocates, 64/768, Jaikunj, Chittoor Road, Kochi-

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682035. However, It is made clear that the Liquidator cannot make further change in the address provided to the RoC until the CIRP is concluded.

12. With the above directions, I.A (IBC)/23/KOB/2021 stands disposed of.

Dated this the 24th day of February, 2021.

Sd/-

(Ashok Kumar Borah)
Member (Judicial)