

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

**I.A No.129/KOB/2020  
in  
TIBA/07/KOB/2019**

(Under Section 33(2) of the Insolvency and Bankruptcy Code, 2016)

Order delivered on 16.09.2020

Coram:

**Shri Ashok Kumar Borah, Member (Judicial)**

**Applicant/Financial Creditor:**

The Federal Bank Limited  
Registered Office: Federal Towers, Bank  
Junction, Aluva, Ernakulam District  
Kerala and Branch Office at LCRD Ernakulam  
Division, Ground Floor, Federal Towers,  
Marine Drive, Ernakulam  
Kerala-682031.  
Through Shri Jasin Jose, CA.(Resolution Professional)

**Versus**

**Respondent/Corporate Debtor:**

M/s Sargam Builders Pvt. Ltd.  
28/3858-D, Sargam House,  
Water Land Road, Elamkulam,  
Cochin, Kerala-682020.

**Appearance:**

For Applicant	:	Shri CA Jasin Jose, Resolution Professional
For Respondent	:	No appearance

**ORDER**

This IA has been filed by the Resolution Professional under Section 33(2) of the IBC, 2016 with the following prayers:

*a) pass an order to Liquidate the company under section 33(2) of the Insolvency*

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- and Bankruptcy Code for liquidation of the Company; and*
- b) Appoint the Resolution Professional as liquidator of the Corporate Debtor under Section 34; and*
- c) Provide police assistance to the Liquidator to take custody and control of the records to complete the valuation process of the Corporate debtor.*

2. This Tribunal vide order dated 20.09.2019 ordered the Corporate Insolvency Resolution Process under Section 7 of the IBC, 2016 in the Application No. TIBA/7/KOB/2019 filed by the Financial Creditor, the Federal Bank Limited against the Corporate Debtor M/s. Sargam Builders Pvt. Ltd. and appointed the applicant herein as the Interim Resolution Professional (IRP) and thereafter he was appointed as Resolution Professional with the approval of CoC on 17.02.2020.

3. On 26.09.2019, the applicant received a copy of an order of the Hon'ble High Court of Kerala in W.P.( C) No. 25642 of 2019 deferring further proceedings of the order of this Bench in TIBA No. 07/KOB/2019.

4. On 04.11.2019, IRP visited the office premises of the Respondent and met the suspended Director, who mentioned that an appeal is pending with the Hon'ble NCLAT and that no orders have been passed by Hon'ble NCLAT. In the meantime, the IRP approached this Tribunal and sought the relief from this Bench for resuming the CIRP Process and this Bench vide order vide MA/15/KOB/2019 dated 13.01.2019 ordered to resume the CIRP and IRP resumed to collect the claims. Only the Federal Bank submitted their claim and no other claim been received from allottees as they are unaware about the CIRP information. However, The Hon'ble NCLAT again vide order in Company Appeal ( AT Insolvency) No. 1297 of 2019 dated 28.11.2019 directed not to constitute the Committee of Creditors (CoC) till further orders and to maintain the company as a going concern with the assistance of the Suspended Board of Directors.

5. Further to that as per the order dated 27.01.2020, the Company Appeal (AT

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Insolvency) No. 1297 of 2019, Hon'ble NCLAT dismissed the petition favouring the financial creditor- Federal Bank. Thereafter, the CIRP was resumed from 07.02.2020 and the first CoC was held on 17.02.2020, where the CoC has resolved with 100% voting to appoint the IRP as Resolution Professional (RP). The second CoC was held on 16.03.2020 . The RP thereafter filed an application - M.A. No. 68/KOB/2020 under Section 40 (2) of CIRP Regulation for extension of time period of CIRP and this Tribunal vide order dated 26.06.2020 extended the CIRP till 29.03.2020 stating that the special provision relating to the timeline issued vide notification dated 29.03.2020 will apply till the lockdown lifting notification is issued by the Government of India. Thereafter, the CIRP resumed on 07.08.2020 and third CoC meeting was held on that date. On 03.09.2020, the fourth CoC was held and as against Agenda item No.8- To take decision on reissue of Form G. COC with 77.92 % (100% of Members Meeting attended) resolved not to reissue Form G further, and not to go for fresh EOI and recommended to file application for Liquidation of Company under Section 33 (2) of IBC 2016 and also resolved to continue the R.P, Shri Jasin Jose as the Liquidator. In the CoC, the representatives of the Federal Bank stated the following reasons for Liquidation:

- a. The project proposal started more than 10 years ago and still no approvals are obtained to start construction.
- b. The project site has undergone various civil litigations.
- c. The conceptual plan is for more than 20 floor twin building and for the same project only few bookings (Currently Less than 13 Nos) has received within this 10 years) and out of it most of the them has filed for compensation and obtained decree from NCDRC.
- d. No structure work is started and looks the project site as plain land, except for underground piling work.
- e. The company has got no other running projects except revenue from two shop rooms and out of it one shop room is vacated.

- f. The company has no other staffs except one office manager and one sweeper.
- g. The company has got no proper office premises with proper records (Rent agreements are not renewed, No electricity connection water connections in the name of company) and its functioning from the house of the Suspended director.
- h. One of the suspended directors Mr VA Rahim aged 73 years is managing day to day affairs of the company and other two directors are family members. The suspended directors has not attended any of the CoC meetings and not extending the co-operation with CoC.

6. The RP further submitted that the suspended directors have not attended any of the CoC meeting and not extended the co-operation with CoC. In view of non-cooperation from the promoter/director of the Corporate Debtor, the RP sought direction for police assistance to collect all the documents for valuation and to complete valuation as the office premises is part of the house of the Corporate Debtor. Another submission made by the RP is that in the present scenario where real estate sector is not in demand and considering the statistics of the unsold unit of finished projects, unfinished units, pending projects, projects of various completion stage in Ernakulum area itself, CoC Suggests that obtaining a resolution applicant for a project without approvals in hand and construction yet to start is difficult and recommends for liquidation of the company so as it will maximize the value of the stakeholders.

7. The Applicant/RP has given consent to continue as the Liquidator (Annexure-5). It is submitted that in the above circumstances and further in order to secure the interest and claims of the creditors, application under Section 33(2) of the I&B Code, 2016 is filed for Liquidation of the Company. Section 33(2) says:

*“(2) 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 percent 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).”*

8. I have heard the Resolution Professional *who appeared through video conferencing* and have also thoroughly perused the whole case records including the minutes of 4<sup>th</sup> CoC meeting held on 03.09.2020. In Item No.8- To take a decision on reissue of form G or any other matter: it is resolved that:

*“COC with 77.92% (100% of Members Meeting attended) resolved not to reissue form G further, and not to go for fresh EOI and recommended to file application for Liquidation of company under Sec 33 (2) of IBC 2016 and RP to continue as the liquidator and to file the application for liquidation of the company.”*

9. Hence, this Tribunal pass the following order:

### **ORDER**

- (i) The Corporate Debtor **M/s. Sargam Builders Pvt. Ltd. is hereby put under liquidation** with immediate effect under Section 33(2) of IBC, 2016
- (ii) As the RP has enclosed his consent to continue as the Liquidator and copy of Authorization for Assignment for and on behalf of Indian Institute of Insolvency Professionals of ICAI, along with this application, the Resolution Professional herein, **Mr. Jasin Jose, IBBI/IPA-001/IP-P-00695/2017-2018/11225** is hereby appointed as **Liquidator** of the Corporate Debtor under Section 34 of IBC, 2016.
- (iii) The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of

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IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.

- (iv) This Tribunal also direct the police authorities concerned, to provide necessary assistance to the Liquidator to take custody and control of the records of the Corporate Debtor, in order to complete the Liquidation Process.

10. With the above directions, **IA/129/KOB/2019 in TIBA/07/KOB/2019** stands disposed of as above.

Dated this the 16<sup>th</sup> day of September 2020.

Sd/-

**(Ashok Kumar Borah)**  
**Member (Judicial)**