

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

MA/1189/2019

IN

IBA/434/2019

*Applications filed under section 33 & 60(5) of the IBC, 2016
r/w Regulation 33(2) of IBBI (Liquidation Process) Regulations, 2016*

In the matter of M/s. Santosh Hospitals Private Limited

Mrs. Deepa Venkat Ramani, RP

For M/s. Santosh Hospitals Private Limited

---Applicant/Resolution Professional

Order delivered on: 17.12.2019

CORAM:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Applicant : *Mr. R. Venkatavaradan*

& Mr. Chandramouli Prabhakar, Advocates

Mrs. Deepa V. Ramani, Resolution Professional

For the Financial Creditor: *Mr. T. Sai Krishnan*

& Mr. R. Saravanan, Advocates

(For M/s. Muthoot Fincorp Ltd.)

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on: 04.12.2019

It is an application filed by the Resolution Professional u/s.33 of the Insolvency and Bankruptcy Code, 2016 r/w. Regulation 33(2) of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and Sec.60(5) of the Insolvency and

Bankruptcy Code, 2016 for liquidation of the Corporate Debtor based on the Resolution passed by the CoC on 18.10.2019 with 73.44% voting share held by M/s. Muthoot Fincorp Limited.

2. On perusal of this case, IBA/434/2019 was admitted on 08.04.2019 appointing Ms. SriPriya Kumar as Interim Resolution Professional, thereafter on collation of claims received by the IRP, the CoC was constituted on 03.07.2019, and the Resolution Professional ordered for valuation of the company.

3. Thereafter, as CoC passed a resolution for replacement of IRP, Ms. Deepa Venkat Ramani was appointed as Resolution Professional (RP) on 27.09.2019. The RP has mentioned that since requisite information was not provided to her by the Promoter-Directors before filing this application, the RP herein could not even determine the liquidation value of the Corporate Debtor.

4. As to determination of the Liquidation value of the company, the Applicant herein has submitted that one of the CoC members i.e. M/s. Muthoot Fincorp Limited holding 73.44% voting

share in the CoC filed MA/363/2019 asserting that part of the site upon which Hospital is erected belonging to the Promoter-Director Mr. Mahalingam, not in the name of the Corporate Debtor based on the documents executed by this Promoter-Director, therefore it has become another impediment in determining the valuation of the company.

5. The Applicant (RP) further stated that she has conducted 2nd, 3rd, 4th and 5thCoC meetings Viz. 19.08.2019, 05.09.2019, 30.09.2019 and 18.10.2019. The Resolution Professional has further stated that in the 2ndCoC meeting held on 19.08.2019, the Resolution Professional has appointed two valuers for valuation of the assets of the company but whereas since requisite information has not come from the Suspended-Directors that valuation has also not come out. The Resolution Professional then prepared draft of invitation for Expression of Interest mentioning that valuation of the company would be subject to the information that is yet to come from the Suspended-Directors and also subject to the outcome of MA/363/2019.

6. The RP has also stated that, in the same meeting, the CoC decided to conduct forensic audit with regard to the affairs of the Corporate Debtor. In the meanwhile, the Suspended-Directors after 1stCoC meeting filed an affidavit before this Bench stating that they would pay ₹57.50Crores to M/s. Muthoot Fincorp Limited within 60 days with effect from 23.07.2019.

7. In view thereof, the Promoter-Directors have even sought for putting all these applications as well as decisions of the CoC on hold. Based on that affidavit, the Suspended-Directors filed two MAs, MA/865/2019 restraining the Resolution Professional from proceeding with the forensic audit and valuation and another MA/1014/2019 to restrain the Resolution Professional from proceeding with giving invitation for Expression of Interest.

8. At this juncture, it is pertinent on the part of us to mention that since the Suspended Directors and their counsel have kept on saying that money would come from various sources so as to avoid sending this company to liquidation, we have also believed that this payment would avert sending this company into

liquidation in that belief waited again and again hoping that this money, which the Suspended Directors promised to bring in, would come but whereas the timelines given by them have been postponed time after time. In between, these Suspended-Directors brought letters from one or the other persons saying that money would come, but no money has come till date. Since everybody was under the belief that it would be settled, CIRP has not gone in the way it is to go.

9. Since all of us were under the belief that money would come, MA/363/2019 seeking adjudication on the Title over some part of the land as well as MAs filed by the Suspended-Directors for putting valuation, forensic audit and invitation for Expression of Interest on hold have not been taken to their logical end.

10. In the meantime, the CIRP period of 180 days is over on 04.10.2019. For the Suspended-Directors were still saying that funds would come, the CoC at the fag end of 180 days period has passed a resolution for extension of CIRP period for another 15 days in addition to 180 days of CIRP period.

11. In pursuance of the said resolution dated 30.09.2019, this Bench extended the CIRP period for another 15 days in MA/1057/2019. As no funds forthcoming from the Suspended-Directors, despite CIRP was running on extension, the CoC ultimately passed a resolution on 18.10.2019 for liquidation of the company as contemplated under the IBC.

12. On Sec.19 application filed by the Resolution Professional, it appears part of the information was given to the Resolution Professional by the Suspended-Directors, as to remaining information, it has not yet come from the Suspended-Directors.

13. Since in the 5thCoC meeting held on 18.10.2019, it has been mentioned that the Resolution Professional would continue as Liquidator, the Resolution Professional is ordered to continue as Liquidator.

14. It is pertinent to mention that on the undertaking given by the Suspended-Directors which has kept everything under

suspended animation, this Bench has passed order on 26.07.2019,
which is as follows:

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"The suspended director, namely, Mr.P.Mahalingam has filed an affidavit stating that the ex-director proposes to pay a sum of ₹57,50,00,000 to M/s. Muthoot Fincorp Limited (Financial Creditor) as full and final settlement in respect of the outstanding dues pending to the aforesaid Financial Creditor (M/s. Muthoot Fincorp Ltd.) within a period of sixty days with effect from 23.07.2019, upon which, the Financial Creditor (M/s. Muthoot Fincorp Ltd.) shall exit from the Committee of Creditors.

The suspended director has further stated that the aforesaid sum will be paid by raising funds through DCB Bank and/or Phoenix ARC and/or Kotak Mahindra Bank and/or Financial Institutions and friends & relatives with an undertaking that upon failure to pay the aforesaid amount within sixty days i.e. with effect from 23.07.2019, the Financial Creditor (M/s.MuthootFincorp Ltd.) may proceed in accordance with the procedure under Insolvency and Bankruptcy

Code, 2016 (IBC). The suspended director has also mentioned that this undertaking has been given to Muthoot Fincorp Ltd. (Financial Creditor) without prejudice to the rights and contentions of the suspended director.

Looking at the affidavit filed by the suspended director, we hereby hold that he shall proceed as stated in the affidavit but until such time, the management of the company will run as contemplated under IBC by making it clear that his affidavit will be considered without prejudice to the rights and contentions of the suspended director as well as M/s.Muthoot Fincorp Ltd.

List this application as fixed earlier i.e. 23.09.2019”.

15. In the above order, it was held that the affidavit of undertaking given by the Suspended-Director Dr. Mahalingam to pay ₹57.50Crores to M/s. Muthoot Fincorp Limited will not cause any prejudice to the rights of either Suspended-Directors of M/s. Muthoot Fincorp Limited. However, the Suspended-Director has failed to raise and pay the money to M/s. Muthoot Fincorp Limited within 60 days or even as on the date of issuing this order.

16. In view thereof at least to expedite the liquidation process, since this Bench is competent enough to pass an order to give direction to the Suspended-Directors to provide all the information which is required to determine the liquidation value of the company and also to liquidate the company as envisaged under the code, we hereby direct the Suspended-Directors to provide information forthwith.

17. In the back drop of these facts, it is evident that no resolution plan has come because no Expression of Interest was issued by the Resolution Professional for the reasons aforementioned. However, since the CoC has taken a decision for liquidation of the company, the same being permitted and explicitly stated u/s. 33(2) of the Code as amended on 16.08.2019 since the CoC has already passed resolution for liquidation of the Corporate Debtor with 73.44% voting share on 18.10.2019, we hereby order for liquidation of the company with the directions as follows:

- a) This Bench hereby orders the Corporate Debtor to be liquidated in the manner as laid down in the Chapter by

issuing a public notice stating that the Corporate Debtor is in liquidation with a direction to the liquidator to send this order to ROC with which this company has been registered.

- b) The Resolution professional viz Mrs. Deepa Venkat Ramani, hereby appointed to act as Liquidator for the purpose of liquidation of the corporate debtor, therefore all powers of the board of directors, Key managerial personnel and partners of the Corporate Debtor, as the case may be, shall cease to have effect and shall be hereby vested in the liquidator. The Personnel of the Corporate Debtor are directed to extend all co-operations to the liquidator as may be required in managing the affairs of the Corporate Debtor. The Insolvency Professional appointed as liquidator will charge fees for conduct of the liquidation proceedings in proportion to the value of the liquidation estate assets as specified under regulation 4 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 and the same shall be paid to the

Liquidator from the proceeds of the liquidation estate under section 53 of the Code.

- c) Since this liquidation order has been passed, no suit or other legal proceedings shall be instituted by or against the Corporate debtor without prior approval of this Adjudicating Authority save and except as mentioned in sub-section 6 of section 33 of the Code.
- d) This liquidation order shall be deemed to be notice of discharge to the officers, employees and workmen of the Corporate Debtor except to extent of the business of the Corporate Debtor is continued during the liquidation process by the Liquidator.
- e) The liquidator is directed to carry the functions of the Liquidator as envisaged under the Insolvency and Bankruptcy Code, 2016 and also Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016.

18. The Registry is hereby directed to immediately communicate this order to the Liquidator, the Corporate Debtor, the IBBI & the concerned ROC by way of e-mail.

19. Accordingly, this MA/1189/2019 filed in IBA/434/2019 is hereby allowed.

-Sd-
(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

SR/Arpan