

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

MA/249/IB/2018 in TCP/198(IB)/2017
[U/s 60 of IBC, 2016]

Mr. Sriharan

... *Applicant*

Vs.

1. M/s. Malabar Hotels Private Limited

... *Respondent/Corporate Debtor*

2. Mr. V. Nagarajan

... *Respondent/Resolution Professional*

MA/264/IB/2018 in TCP/198(IB)/2017
[U/s 30(6) of IBC, 2016]

Mr. V. Nagarajan,

RP on behalf of Malabar Hotels P. Ltd.

... *Applicant/Resolution Professional*

MA/268/IB/2018 in TCP/198(IB)/2017
[U/s 60 of IBC, 2016]

Mr. Sai Krishna

CEO & Director

ARSA Energy Private Ltd.

... *Applicant*

Vs.

1. M/s. Malabar Hotels Private Limited

... *Respondent/Corporate Debtor*

2. Mr. V. Nagarajan

... *Respondent/Resolution Professional*

Order delivered on: 03.08.2018

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K. ANANTHA PADMANABHA SWAMY, MEMBER (J)
S. VIJAYARAGHAVAN, MEMBER (T)

For the Applicant in MA/249/IB/2018 : Mr. S. Arvindhan, Advocate,
M/s. Fox Mandal Associates
For the Applicant in MA/268/IB/2018 : Mr. Pawan Jabakh, Advocate
For the Resolution Applicant : Mr. Nirav Shah, Mr. A Kevin Thomas,
Advocates, M/s. King & Partridge
For Resolution Professional : Mr. V. Nagarajan (in person)

COMMON ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (T)

Under consideration are three applications viz. MA/249/IB/2018, MA/264/IB/2018 and MA/268/IB/2018 filed under Section 60, 30(6) and 60 of Insolvency and Bankruptcy Code, 2016 (IBC) respectively.

2. The applicant in MA/249/IB/2018 is the erstwhile Managing Director of the Corporate Debtor company (the Company) who has prayed for, inter alia, a direction to the Resolution Professional (RP), 2nd respondent, to investigate on the insurance money of Rs.13,67,10,990/- paid by the insurance company as to how the same was utilized and to provide certain information relating to valuation of R1 Company, proposals and claims received, minutes of CoC etc.

3. Application MA/264/IB/2018 has been taken out by the Resolution Professional praying for approval of the

Resolution Plan that has been duly recommended by the Committee of Creditors (CoC) of the Company.

4. The applicant in MA/268/IB/2018 is a third party praying for directions to be issued to RP (i) to provide certain information regarding the Company so that a resolution plan for Rs.110 crores may be submitted by him and (ii) to place the Resolution Plan before the CoC for consideration.

5. The background of this IB matter is as follows:

TCP/198(IB)/2017 was admitted by this Adjudicating Authority and commencement of CIRP was ordered with effect from 16.8.2017 by appointing Mr. V. Nagarajan as IRP who continued to remain as RP. On 2.2.2018 the period of CIRP was extended for another 90 days beyond 180 days. The CIRP period was further extended up to 26.6.2018 by this Tribunal on an application made out by the RP. On 20.6.2018 reportedly, the 9th CoC approved the Resolution Plan submitted by one Mr. Sarang Sudhakar Kale and on 22.6.2018 RP has filed MA/264/IB/2018 before this Tribunal for approval of the Resolution Plan.

6. While so, the applicant in MA/249/IB/2018 (erstwhile Managing Director of the Company) filed MA/186/IB/2018 under Section 60 of IBC and the Resolution Professional filed an application MA/185/IB/2018 under Section 30(6) of IBC. Both the

MAAs came up for hearing on 2.7.2018 and on 3.7.2018. MA/186/IB/2018 was disposed of by this Tribunal on 3.7.2018 with the following direction:

“Counsel for RP present. Learned Counsel for the applicant present and made submissions. Resolution Applicants have submitted that they would like to make their resolution plans before the RP and the CoC for consideration. For this a period of two weeks is given to them within which they have to submit their resolution plan. Learned Counsel for the one of the Resolution Applicants have stated that they require some more details before finalizing their resolution plan. In this connection the RP is directed to give necessary information as is available with him for the purpose of evolution of the resolution plan. Counsel for one of the Resolution Applicants who had already submitted a plan is also at liberty to revise his offer.....”

With these observations the MA is disposed of”.

MA/185/IB/2018 filed by the RP for approval of resolution plan was also disposed of on 3.7.2018 with the following observations:

“Counsel for RP present. Counsel for the resolution applicant present. In view of the orders passed in MA 186/IB/2018 to consider the proposals of the other Resolution Applicants, the present application filed for approving the resolution plan stands disposed of. The RP may file a fresh resolution plan after getting the approval of the CoC. With these observations, the MA is disposed of.”

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7. When MA/249/IB/2018 came up for hearing on 18.7.2018, this Tribunal again directed the parties to comply with the directions issued on 3.7.2018. During the course of argument on 24.7.2018, counsel appearing for Applicants in MA/249/IB/2018 and MA/268/IB/2018 alleged that the RP failed to comply with the directions issued by this Tribunal on 3.7.2018, which was again emphasized by this Tribunal on 18.7.2018, and hence they were deprived from submitting their Resolution Plan. From the order sheets dated 3.7.2018 and 18.7.2018, it is clear that enough indulgence has been made by this Tribunal in favour of the Applicants in MAs 249 and 268. Despite having availed sufficient time and opportunity the Applicants in MA/249/IB/2018 and MA/268/IB/2018 neither submitted any EOI nor any bid/Resolution Plan within the extended time. It is true that the RP was directed to divulge necessary information as was available with him for the purpose of evolution of the resolution plan by the Applicants in the above said MAs. However, RP during the course of hearing submitted that since the Applicants in the above MAs have not come up to pay the pre-deposit/earnest money deposit of Rs.25 lakhs, no information has been provided by him.

8. In this case, this Tribunal is of the view that the new amendments to IBC which came into effect on 06.06.2018 are not applicable. The un-amended

provision provides for submission of bids 30 days before the date of ending of CIRP. In this case, it has not been done even after having granted sufficient time to the Applicants in MAs 249 and 268. Further, in the interim order given by this Tribunal, time was extended with for submission of Resolution Plan and did not evidence any express order for dispensation of the earnest money of Rs.25 lakhs. Moreover, in view of the fact that the Applicants in the above said MAs having failed (i) to pay the earnest money deposit (ii) to submit their EOI/Resolution Plan within the extended time frame and (iii) to show any financial tie-up or financial statements to substantiate their net worth, their application is devoid of any merit. Accordingly, **MA/249/IB/2018 and MA/268/IB/2018 are rejected as devoid of any merit.**

9. With regard to **MA/264/IB/2018** filed by the Resolution Professional seeking approval of the Resolution Plan submitted by him, the following points are observed by this Adjudicating Authority:

- The Financial credentials and net worth of the person who has submitted the Resolution plan as an individual and in his own name has not been mentioned.
- There is no mention of definite arrangements regarding the payment of the rest of the amount as

no financial tie-up has been entered into by the resolution applicant whose resolution plan is sought to be approved by this Tribunal.

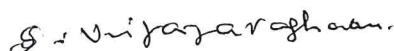
- In this case, only a letter from a financial services agency has been enclosed regarding the possibility of securing funding for the Resolution Applicant on the sanctioning of the Resolution Plan and after mortgaging the assets of the Corporate Debtor.
- It is seen that the operational creditors are not getting any immediate upfront payment rather they are being offered redeemable preferential shares which will be redeemed at the rate of 2.75 times the face value of the preferential shares after six years of approval of the Resolution Plan by this Tribunal. In case of the failure to repay the amount as indicated after six years, it will be converted into equity shares of equivalent value.
- The resolution applicant seeks to mortgage the property of the corporate debtor in order to raise funds which will tantamount to taking away the core asset value of the corporate debtor.
- In case the Resolution Applicant fails to make payments, the encashment of the assets will become difficult as in the meantime security interests may be created on the properties of the corporate debtor.

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- It is also seen that in this case, another resolution applicant for Rs.75 crores has committed himself to make all payments within 45 days after the approval of the resolution plan.
- The liquidation value of the assets of the Corporate Debtor Company as has been provided by the valuers may also be submitted along with the above referred issues.
- The CoC should also consider setting up of an escrow account in view of the order of the Hon'ble High Court of Madras passed in OSA No. 313 of 2017 dated 28.6.2018 with regard to the disposal of the proceeds of the resolution plan.

In the light of the above observations of this Adjudicating Authority, the CoC may reconsider its recommendations and may submit the same through the RP regarding which reference to the issues pointed out in this order within 15 days.

MA/264/IB/2018 to be listed on 24.08.2018.



[S. Vijayaraghavan]
Member (Technical)



[K. Anantha Padmanabha Swamy]
Member (Judicial)

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