

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

MA/255/IB/2018
In
CP/634/IB/CB/2017

Under Section 60(5)(C) of the IBC, 2016 r/w Regulation 36 of the
IBBI(Insolvency Resolution Process for Corporate Persons)
Regulations, 2016

In the matter of

M/s.Sri Kavery Medical Care (Trichy) Limited

...Applicant

Vs.

M/s.Vangal Amman Health Service Limited

... Respondent

Order delivered on: 29.08.2018

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**K. ANANTHA PADMANABHA SWAMY, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)**

*For the Applicant : Shri.Vaasavi Shriraman, Advocate
For the RP : Shri.Aashish Jain Lunia, Advocate*

ORDER

Per: S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

- 1) The Tribunal vide its order dated 22.11.2017 in CP/634/(IB)/CB/2018 (**Annexure-1**) has admitted the Insolvency Petition against the Respondent Company and appointed Mr. G.V Ravikumar as the Interim Resolution Professional.
- 2) Form -G (**Annexure-2**) Invitation of Resolution Plan was

published by the Resolution Professional on 22.03.2018 according to which:

- a. Serial no.10 states that the date of issue of invitation was 23.03.2018;
 - b. Serial no.12 states that the date of issue of evaluation matrix was 30.03.2018 and;
 - c. Serial no.14 states that the last date for the submission of the resolution plan by the prospective Resolution Applicant was 22.04.2018.
- 3) However, the evaluation matrix was not provided on the date mentioned in Form-G. Despite several reminders to provide the same, the Memorandum and the Matrix were not provided by the Resolution Professional until 07.04.2018, which was 7 days after the date mentioned in Form-G (**Annexure-4**).
- 4) The Information Memorandum provided on 07.04.2018 was incomplete and did not contain the requisite details. An extension of time was sought for by the Applicant and the same was granted by the Resolution Professional, extending the last date to submit the Resolution Plan by 7 calendar days i.e. till 29.04.2018 vide e-mail dated 21.04.2018 (**Annexure-6**).

- 5) The Resolution Professional provided the Applicant with the details sought for by the Applicant vide email dated 27.04.2018 (**Annexure-7**), A Proposed Resolution plan was submitted by the Applicant on 28.04.2018 based on the information provided by the Resolution Professional (**Annexure-8**).
- 6) Vide an e-mail dated 10.05.2018 the Resolution Professional informed the Applicant that the bid offer of the Applicant was below that of the liquidation value and that a public announcement had been made inviting plans. (**Annexure- 9**).
- 7) A Form-G Inviting for Resolution Plans was published by the Resolution Professional on 09.05.2018 (**Annexure-10**) according to which:
- a. Serial no. 10 states the date of issue of invitation was 10.05.2018;
 - b. Serial no. 12 states the date of issue of evaluation matrix was 11.05.2018 and;
 - c. Serial no. 14 states the last date for the submission of the evaluation plan by the prospective Resolution Applicant was 17.05.2018.
- 8) Vide e-mail dated 14.05.2018 a revised Information Memorandum and Evaluation Matrix was brought forth by the Resolution Professional

(Annexure-11) based on which a second Resolution Plan was submitted by the Applicant on 17.05.2018 (Annexure 12).

9) On 29.05.2018 a notice was received, 24 hours prior to a meeting of the Committee of Creditors to be held in Coimbatore (Annexure-13). During the course of the in-camera meeting held on 30.05.2018, additional and vital information was brought forth by the Resolution Professional regarding further liabilities of the Respondent including:

- a. Provident fund dues estimated at Rs. 2.5 Crores and;
- b. Debt due to Operational Creditors estimated at Rs. 3 Lakhs.

10) Vide an e-mail dated 31.05.2018 the Resolution Professional insisted that the last date for the submission be 02.06.2018. (Annexure -14). Vide an e-mail dated 30.05.2018 the RP provided the Applicant with the format in which the Improved Resolution Plan had to be submitted (Annexure-15)

11) On 06.06.2018 a revised and improved Resolution plan was submitted by the Applicant (Annexure-17). Vide e-mail dated 20.06.2018 the Resolution Professional has stated that based on the instructions given by the CoC members he is not in a position to

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extend the date of submission of revised resolution application beyond 02.06.2018. **(Annexure-18)**. The Resolution plan was therefore not placed before the Committee of Creditors for their review by the Resolution Professional.

12) Vide e-mail dated 24.06.2017 the Resolution Professional has stated that it was not possible to accept the applicant's plan as it was submitted belatedly and that the Committee of Creditors had instructed him to only consider resolution plans received up to 02.06.2018 **(Annexure-20)**.

13) It has been stated that, the Resolution plan submitted by the Applicant on 06.06.2018 along with the addendum submitted on 29.06.2018 is an ideal plan that ought not to be rejected for the following reasons:

- a. The Resolution plan provides for the payment of 50% of the value, upfront;
- b. Being a reputed hospital established in several cities across Tamil Nadu the Applicant is in the best possible position to run the Respondent as a going concern hospital;
- c. The Applicant has demonstrated successful turnaround capacity in several instances;
- d. The Applicant has facilities with over 1200 beds across 5 locations;
- e. The Applicant is the largest regional multi-specialty hospital

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chain in Tamil Nadu;

- f. The Applicant has plenty of experience in the field of medicine;
- g. The Applicant has been adhering to all the statutory provisions of law in running the multiple hospitals;
- h. The Applicant has above average financial projections and;
 - 1. The Applicant has a secure financial backup.

The above also ensures that the Applicant scores well in the bid evaluation criteria set-forth by the Committee of Creditors.

14) The prayer of the Applicant reads as follows;

- a) *Direct the Resolution Professional to place the Resolution Plan made by the Applicant before the Committee of Creditors for their approval;*
- b) *Direct the Committee of Creditors to sincerely consider the Resolution Plan submitted by the Applicant.*
- c) *Direct the Resolution professional and the Committee of Creditors to follow the timelines set forth in the Regulations and to provide the Applicant with reasonable time in the event new information is being disclosed hereinafter; and*
- d) *To pass such other orders as may be necessary.*

ORDER

In view of the above the Tribunal observes that as per the minutes of the meeting held on 02.08.2018 with regard to this Applicant reads as follows;

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“Note-3

SKML has submitted their Resolution application on 16.05.2018. Whereas RA was invited to attend COC meeting on 30-05-2018 and was asked to submit revised cum improved offer on or before 02-06-2018.

Whereas RA had asked for extension of time to submit their plan and had not submitted plan before 02-06-2018.

*Hence, the plan submitted by RA on 16-05-2018 was **considered** for decision making.*

The Plan submitted was for a sum of Rs.54.10 Crores.

The duration of the plan was never mentioned in the plan.

The score obtained by thus RA is 57 marks in accordance with Revised Evolution Matrix dt. 09-05-2018.

The quotes sent on 06-06-2018 for a sum of Rs.56.00 crores and on 29-06-2018 for a sum of Rs.60.00 Crores were received belatedly and hence were not considered. The reasons for sending two different quotes to the RP after 02-06-2018 is best known to the RA.

Decision: This Resolution Plan has not been considered as the Plan amount is only Rs.55.00 crores, with no time limit mentioned plan. Hence, this plan has not been considered for decision making.

This Plan was discussed in the COC meeting and was decided not to consider the Resolution Plan. “

The Tribunal observes that the Applicant’s plan was placed and discussed before the COC and it was decided not to consider the plan for the reasons contained in the minutes of the meeting mentioned above.

In view of the above the Application **MA/255/IB/2018** In **CP/634/IB/CB/2017** stands **dismissed**.


(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)


(K.ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

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