

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

IA (IBC)/157/KOB/2023

IN

CP (IB)/5/KOB/2021

In the matter of Insolvency and Bankruptcy Code, 2016;

In the matter of

Mr. K. Parameswaran Nair, Resolution Professional, Samson and Sons Builders and Developers Pvt. Ltd.

... Applicant

-And-

In the matter of

Vijayakumaran J

... Operational Creditor

-Versus-

Samson and Sons builders and Developers Pvt. Ltd.

... Corporate Debtor

Parties/ Counsel present (through video conference):

For Petitioner

Mr. Vinod P.V., Adv.,

Mr. Mr. K. Parameswaran Nair.

Order reserved on: 20.04.2023

Order pronounced on: 26.04.2023

Coram:

Shri. P. Mohan Raj

Member (Judicial)

Shri. Satya Ranjan Prasad

Member (Technical)

ORDER

1. This application is filed by Resolution professional for extension of 90 days from 17.04.2023 to 15.07.2023 to complete the Resolution process which was commenced on 03.11.2021.

2. The corporate debtor Samson and Sons was admitted into CIRP on 03.11.2021. Initially Mr. Mohammed Davood was appointed as interim resolution professional, he was replaced by Mr. Lukose Joseph as Interim Resolution

professional on 09.11.2021. Then the applicant Mr. K. Parameswaran Nair was appointed as Resolution professional on 16.03.2022.

3. The period of 139 days excluded from Resolution period by order dated 01.07.2022 passed in I.A. No. (IBC)/106/KOB/2022. The 90 days extension was granted from 18.09.2022 to 17.12.2022 by order dated 21.09.2022 passed in I.A.(IBC)/269/KOB/2022. The period 60 days extended from 22.12.2022 to 15.02.2023 by order dated 22.12.2022 passed in I.A.(IBC) No. 475/KOB/2022. The 60 days extension from 15.02.2023 to 16.04.2023 was granted by order dated 15.02.2023 passed in I.A. No./67/KOB/2023. Now this application is filed for further extension of 90 days from 17.04.2023. Already thrice time extended and once time exclusion was ordered. As on to-day this date of order more than one year five months expired. Till date single plan is approved by CoC.

4. The applicant stated that six project plans has been received, but in the mean while land owners of two projects have filed their application to exclude their lands from the assets of corporate debtor. At this juncture Adjudicating Authority directed to convene the meeting with prospective applicant and also with the land owners, but the land owners not convinced with the proposed plans. On the land owners side stated that the House buyer's association proposed to submit a plan, after getting approval, they plan to find out a builder and enter an arrangement to complete the projects on their behalf. This is unviable thing. Till date no single plan is received from any prospective builders.

5. On the land owners side already applications are filed to delink their lands from the CIRP. The land owners alleged that the home buyers planned to submit plan without minding the agreement entered between the land owners and corporate debtor.

6. On the applicant side even though says that there is possibility of getting plans project wise, but not explained how the plan will be successful when the Conesus is not arrived with the land owners. Thus, it appears that there is no chance to receive any viable plan in near future.

7. On the applicant side without taking, it in serious, as usual repeatedly filing the applications for time extension. While granting time extension on the last occasion on 15.02.2023 it is specifically mentioned that as a special case time

extension was granted beyond 330 days, but after granted said time extension till date there is satisfactory improvements.

8. This application is filed under Rule 11 of NCLT Rules 2016, to exercise inherent power, when a specific provision section 12 of IBC 2016 is available inherent power cannot be invoked. Further as per section 12 of IBC the maximum time period prescribed is 330 days, but here already as on 16.04.2023, the till time extended 519 days expired, hence we hesitate to accept the time extension request.

9. On the applicant side argued that as per the Apex court citations, the Adjudicating Authority can grant more time beyond 330 days, and further submitted since this is a home buyers' case, if the time is not granted 191 home buyers will suffer and further submitted the object of IBC is to revive the corporate debtor and not for liquidation. It is also submitted that the maximization of value of the corporate debtor is an object of the CIRP and not for liquidation. It is true maximization of value is object of IBC 2016 but the said maximization has to be achieved within the timeline provided in the scheme. In this situation there is no scope to extend the time. It is true the Apex court in **Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta and others (2020) 8 SCC 531** held that the Adjudicating Authority can give short extension beyond 330 days, but this is applicable only if it is shown that short period is left for completion. Here the process is not yet commenced hence the said citation is not useful to the case of the applicant. The relevant portion of the supra-Apex court citation is runs as follows:

The effect of this declaration is that ordinarily the time taken in relation to the corporate resolution process of the corporate debtor must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, on the facts of a given case, if it can be shown to the Adjudicating Authority and/or Appellate Tribunal under the Code that only a short period is left for completion of the insolvency resolution process beyond 330 days, and that it would be in the interest of all stakeholders that the corporate debtor be put back on its feet instead of being sent into liquidation and that the time taken in legal proceedings is largely due to factors owing to which the fault cannot be ascribed to the litigants before the Adjudicating Authority and/or Appellate Tribunal, the

delay or a large part thereof being attributable to the tardy process of the Adjudicating Authority and/or the Appellate Tribunal itself, it may be open in such cases for the Adjudicating Authority and/or Appellate 132 Tribunal to extend time beyond 330 days. Likewise, even under the newly added proviso to Section 12, if by reason of all the aforesaid factors the grace period of 90 days from the date of commencement of the Amending Act of 2019 is exceeded, there again a discretion can be exercised by the Adjudicating Authority and/or Appellate Tribunal to further extend time keeping the aforesaid parameters in mind. It is only in such exceptional cases that time can be extended, the general rule being that 330 days is the outer limit within which resolution of the stressed assets of the corporate debtor must take place beyond which the corporate debtor is to be driven into liquidation.

In these circumstances the time extension request of the applicant is turned down as unsustainable.

10. In consequence of dismissal of time extension petition, since the resolution process period and extended period were already expired, and more than seventeen months expired from 03.11.2021 the date on which the corporate debtor was admitted into CIRP, the corporate debtor M/s Samson and Sons Builders and Developers Pvt Ltd is ordered to be liquidated under section 33(1) of IBC 2016.

11. The Resolution Professional **Mr. K. Parameswaran Nair**, is appointed as Liquidator. Mr. K. Parameswaran Nair Insolvency Resolution Professional, having his having his Registration No: IBBI/IPA-001/IP-P01773/2019-2020/12702 and office at 37/1736 E, Kripasagaram, K murali Road, Kadavanthara, Kochi 20 Ernakulam, Kerala, 682020 is appointed as Liquidator, of M/s Samson and Sons Builders and Developers Pvt. Ltd. he has to submit his written consent in a specified form within a week from this date of order, then to proceed.

12. The Liquidator is directed to forthwith take into his custody all the assets, Properties, equipment, machineries, and actionable claims of the corporate debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.

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

14. Public Notice as contemplated under section 33(1) of the Code shall be issued in one morning, English daily and in one morning regional language newspapers.

15. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel, shall cease to exist in accordance with section 34(2) of the Code. These powers shall henceforth vest in the Liquidator. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor.

16. On initiation of the Liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor, save and except the liberty to the liquidator to institute a suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.

17. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and work men of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the liquidator.

18. In terms of Section 33(1) (b) (iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Kerala, within whose jurisdiction the Corporate Debtor is registered.

19. The fee of Liquidator to be determined as provided under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation process) Regulation 2016.

20. As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.

21. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel and to ROC, Odisha for information and for taking necessary steps,

22. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd/-

Satya Ranjan Prasad
Member (Technical)

Sd/-

P. Mohan Raj
Member (Judicial)

Signed on this 26th day of April, 2023.

Kaushal P.S.