

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

**MA/72/KOB/2020
IN
TIBA/11/KOB/2019 & IBA/28/KOB/2019**

(Under Sections 60 of the IBC, 2016)

Order delivered on 27th August, 2020

Coram:

Hon'ble Shri Ashok Kumar Borah, Member (Judicial)

Applicant/Resolution Professional:

**Bijoy Prabhakaran Pulipra
Resolution Professional
PVS Memorial Hospitals Private Limited,
No.XXIV/1484, Kaloor, Ernakulam,
Kerala-682017.**

In the matter of

PVS Memorial Hospital Private Limited

Parties/Counsel present (through video conference)

For the applicant : Shri Bijoy Prabhakaran Pulipra, Resolution Professional

ORDER

The Insolvency Bankruptcy Board of India (IBBI) vide notification dated 29th March, 2020 has inserted Regulation 40C, a special provision relating to time line under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

2. The brief facts leading to this MA is that this Tribunal admitted TIBA/11/KOB/2019 and IBA/28/KOB/2019 on 16th October, 2013 wherein the applicant herein was appointed as the Interim Resolution Professional and thereafter as the Resolution Professional (RP) by the CoC at their first meeting held on 17th December, 2019. The R.P. invited expression of interest from prospective resolution applicants and received the offer from few interested persons. However, on 24th March, 2020 complete lock down throughout the country was ordered via the Government of India. The lockdown was extended till 30th June, 2020. Accordingly the applicant herein in consultation with the Committee of Creditors had issued the revised schedule of resolution plan submission process to all the prospective resolution applicants who had submitted the expression of interest presuming that the lockdown will come to an end on 31st May, 2020 fixing the due date for submission of objection as 5th June, 2020. The eligible prospective resolution applicant requested the applicant to proceed with the issue of request for resolution plan. The applicant sent a mail to IBBI an ICSI-IIP seeking clarification on the applicability of Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2014 in the wake of 'Unlock 1.0' with effect from 8th June, 2020. However, he did not get any clarification. He placed the above subject before the Committee of Creditors on its 10th meeting which had unanimously decided to extend the time line specified in the code for the resolution plan submission process and completion of CIRP till 30th June, 2020. On 30th June, the Government of India had given direction and guidelines on "Unlock 2.0". Taking into that, the applicant is of the view that the defects pointed out in EOI can be very well addressed and rectified at this stage by the prospective resolution applicants marked as ineligible as all the offices and bank are now fully functional and there is nothing preventing

them from submitting the documents called for. However, the Committee of Creditors is of the opinion that applicant can initiate any action with regard to the CIRP only after obtaining guidelines and clarifications from the IBBI or ICSI-IIP. Applicant states that in order to protect the interest of the creditors and stake holders of the Corporate Debtor and request for resolution plan, evaluation matrix and information Memorandum to enable the eligible prospective resolution applicants, the CIRP is to be continued. Hence, he approached before this Tribunal with the following prayer:

“Issue necessary direction with regard to the applicability of Regulation 40C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 and reinstatement of the Corporate Insolvency Resolution Process pursuant to the “unlock 2.00” declared by the Ministry of Home Affairs”.

3. I have meticulously gone through the averments made in the Miscellaneous Application and heard the arguments advanced by the learned Resolution Professional/applicant. At this juncture I considered the order passed by the Hon’ble Supreme Court of India, Suo Motu Writ Petition (CIVIL) No. 3/2020 in which it was held that:

“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of Limitation or under Special Laws (both Central and /or State). To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in such proceedings, irrespective of limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended

w.e.f. 15th March 2020 till further order(s) to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.”

4. I also considered the notification published by Insolvency and Bankruptcy Board of India dated 29.03.2020, (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020, stated that: -

“40C. Special provision relating to time-line.

Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”.

5. In the light of the above judgment of the Hon'ble Supreme Court and the amendment made on 29.03.2020 under Section 40 C and also considering the averments made by the RP in this MA and on hearing the Resolution Professional through video conferencing, this Tribunal allow the prayer as follows:

- (i) This Tribunal hereby direct the reinstatement of the Corporate Insolvency Resolution Process pursuant to the “Unlock 2.0” declared by the Ministry of Home Affairs as the special provision relating to the time line issued vide notification dated 29.03.2020 will apply till the lockdown lifting notification is issued by the Government of

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India. However, it is made clear that entry into the Corporate Debtor's premises, by the R.P. or its agents/Resolution Applicants, shall be strictly as per the Covid Protocol, issued by the Government of India.

6. With the above direction MA/72/KOB/2020 is allowed.

Dated this the 27th day of August, 2020

Sd/-

Ashok Kumar Borah
Member (Judicial)