

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

**MA/177/KOB/2020
in
TIBA/11/KOB/2019
(Under Section 60(5) of IBC 2016)**

Order delivered on: 14th December, 2020

CORAM

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Applicant

P.Jayagovind, C-061, DLF New Town Heights
Seaport Airport Road, Opp.Kochi Doordarshan
Kakkanad, Cochin-682030.

Versus

Respondents

1.Mr.Bijoy Prabhakaran Pulipra (Resolution Professional)
JBP& Associates, Artis House,
Ground Floor, TC-11/789(1)
Plamoodu, Nalanda Junction Road,
Nanthancode, Kowdiar PO, Kerala-695003.

2. PVS Memorial Hospital Pvt.Ltd
Kaloor, Kochi

Appearance: (through video conferencing)

For applicant	- Shri Dinesh R.Shenoy, Advocate
For Respondents	- Shri Bijoy P.Pulipra, PCS (Resolution Professional)

ORDER

This M.A has been filed by an employee (General Manager, Finance) of the Corporate Debtor in TIBA 11/KOB of 2019 under Section 60 (5) of the Insolvency & Bankruptcy Code, 2016 against the Resolution Professional of M/s PVS Memorial

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Hospital Private Limited (formerly a registered Unlisted Public Limited company). The Applicant is a Chartered Accountant by profession and has more than 30 years of experience in the field that and he joined the Corporate Debtor M/s PVS Memorial Hospital Private Limited on 28.08.1996. The Applicant had worked for the Hospital with dedication and commitment till closure of the Hospital during May 2019. The reliefs sought are as follows:

- (i) Set aside Annexure A VII order dated 2/11/2020 issued by the Resolution Professional, Shri. Bijoy P Pulipra, rejecting the applicant's claim in toto.
- (ii) Issue an order, directing the RP to receive the documents submitted by the Applicant and to take a fresh reasoned decision on his claim under the Regulations 10 and 14 of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, after hearing the applicant/his counsel also, and also issue a consequential revision in the list of claims published by the RP at the earliest.

2. The brief facts leading to the application is as under:

(a) This Tribunal vide order dated 16.10.2019 admitted the IBA/11/KOB/2019 and ordered the Commencement of a Corporate Insolvency Resolution Process of M/s PVS Memorial Hospital Private Limited, Cochin and appointed Shri. Bijoy Pulipara as IRP/RP in the matter.

(b) The Resolution Professional (RP) made public announcement through FORM A calling upon all the creditors to submit their claim before 30.10.2019 to him. The Applicant had completed the FORM D along with proof of claim and submitted the

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same to the Resolution Professional by electronic means on 30.10.2019, with all the supporting documents as called for by the R.P.

(c) However, the applicant stated that he did not receive any communication from the office of the Resolution Professional (RP). As nothing was heard from the RP for a long time, the applicant had contacted both the RP as well as his staff to enquire the fate of his claim application and to enquire whether any further action or documents are necessary from his part. But he was told that his claim is being processed and he would be contacted, if any clarifications or explanations/documents are required. The applicant stated that he had been seriously unwell and had been confined to his residence due to COVID 19 and that he was not served with any notice of hearing by the RP. But when he verified the website of the RP on 20.10.2020, he was totally shocked that a list of claims was published by RP in which the claim of the applicant was also reflected for the reason as it is an excess claim.

3. The learned counsel for the applicant argued that the Applicant has not been provided any opportunity to substantiate his claim as provided for in Regulation 10 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. There is absolute violation of principles of natural justice and arbitrariness and violation of principles of law laid down by the Honourable Supreme Court with regard to the manner and mode in which quasi-judicial authorities can exercise their powers and functions in determining civil claims and adjudicating disputes of civil rights.

4. The Applicant also stated in the MA that he had produced the Bank statement from Axis Bank bearing Account No. 081010100030825 for the period from 01.08.2017 to 31.08.2017 as directed by the RP which clearly reflects the salary credited in the Applicant's account on 09.08.2017 as Rs 7,98,200/- (Seven Lakhs

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Ninety-Eight Thousand Two Hundred), after TDS and the Applicant had also produced the Income Tax Return filed for the Assessment Year 2018-2019, (Previous Year 2017-2018) wherein he has disclosed salary received from M/s PVS Memorial Hospital Private Limited as per Form 16 certificate as Rs 1,11,67,000/-.

5. The learned counsel for the applicant argued that the RP has simply accepted the false and interested oral statement made by the suspended Managing Director of the Corporate Debtor that the salary of the applicant had been reduced by her retrospectively, arbitrarily and illegally from Rs. 12.05 lakhs to a mere Rs.1.05 lakhs w.e.f. 01.01.2018. No documents submitted before the RP and this so-called revision said to be made was not even put to the applicant, before this was simply accepted as gospel truth by the RP. Based on such illegal and arbitrary acts, the RP has rejected the entire claims raised by the applicant, without any notice or hearing in absolute violation of law.

6. The Resolution Professional filed a counter and refuted the allegations in the MA stating that the Applicant had deliberately concealed the fact that he is one of the Shareholders of the Corporate Debtor, holding 16,95,000 (Sixteen Lakh Ninety-Five Thousand) Equity Shares of Rs. 10/- (Rupees Ten Only) each, which is 0.75 % of the Total Equity Paid Up Share Capital of the Corporate Debtor, and that he had received the Claim Form from the Applicant on 30.10. 2019 and the said claim was numbered as Claim No PVS/D/306 and the details of the same had got immediately published in the website of the Resolution Professional, along with the other claims, subject to the verification.

7. It is further stated that since the Corporate Debtor was inoperative since July, 2019 due to the non-availability of electricity supply, the RP was unable to complete the verification of the claim with the books of accounts and other records of the

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Corporate Debtor. The RP had brought the aforesaid matter to the notice of this Tribunal and this Tribunal vide order dated 06.11.2019, in M.A/14/KOB/2019 directed the KSEB for reinstatement of electricity and water connection as per Section 14(2) of the Insolvency and Bankruptcy Code, 2016 ('Code'). On setting Electricity connection, the RP verified all the claims, including the claim form submitted by the Applicant, subsequent to the activation of the database server and consequent retrieval of the financial information stored therein, to his satisfaction and admitted the claims after due verification. The allegations of the Applicant regarding the non-communication of the claim rejection is denied by the Respondent in view of Sub Regulation (2) of Regulation 18 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution of Corporate Persons) Regulations, 2016. The above Regulation do not require the Resolution Professional to adjudicate the claims and intimate the same to all the claimants. The Code requires the Resolution Professional only to verify and determine the claims.

8. It is further stated in the counter that as per Regulation 14 of Insolvency and Bankruptcy Board of India (Insolvency Resolution of Corporate Persons) Regulations, 2016, where the amount claimed by a creditor is not precise due to any contingency or other reasons, the Interim Resolution Professional or the Resolution Professional, as the case may be, shall make the best estimate of the amount of the claim based on the information available with him. The Resolution Professional is not an Adjudicating Authority and is not required to enquire into the factual scenario between parties and determine their rights and liabilities as the Resolution Professional do not have any adjudicatory powers. The scope of a Resolution Professional is limited to verifying the claims received in the light of Regulations 13 and 14 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Corporate Persons) Regulations 2016. Hence,

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the averments in the Application regarding the "Non-Adjudication" of the Claim by the Resolution Professional is not correct.

9. On merit, the Resolution Professional stated that the Applicant had submitted his claim by citing his salary as Rs 12,05,000/- (Rupees Twelve Lakhs Five Thousand Only) per month from August, 2017 to April, 2019 and claimed the privilege leave, PF and gratuity by taking the said amount as base salary. However, during verification of records, it was found that the salary due entries are not passed in the ledger of Mr. P Jayagovind (applicant) from FY 2017-18 onwards, in the books of the Corporate Debtor. For this purpose, he has relied upon the relevant records of the Corporate Debtor as well as the internal information shared with him while conducting the verification of the claim. Based on the same, he had re-computed the salary and allowances payable to the applicant (claimant) in view of the information available on record, which amounts to Rs. 91,10,085. Also, an amount of Rs. 1,11,08,088/- is shown as paid in advance to Mr. Jayagovind as per the ledger data. The Claim submitted by the Applicant is fully silent on that aspect. Upon setting-off these figures, there is a net balance of Rs. 19,98,003/- (Rupees Nineteen Lakhs Ninety-Eight Thousand and Three Only) to be returned by the applicant to the Corporate Debtor.

10. It is also stated that the Applicant had submitted additional documents to the Resolution Professional by email dated 16.10.2020, which are annexed as Annexure A II and A IV in this application, but he did not enquire about the reason for rejection of his claim. The Resolution Professional duly replied to the said email citing the reasons for the rejection. The letter from the Resolution Professional cannot be tantamount as an "Order of Rejection" under any circumstances. Immediately on receipt of the letter of the Applicant, the Resolution Professional requested the Applicant to submit copy of the bank statements or any other documents to

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substantiate the claim, as the records of the Corporate Debtor are not matching with the claim form. However, to his dismay, instead of submitting the data called for by the Resolution Professional, the Applicant filed this Application making various allegations against the Resolution Professional in particular and the CIRP in general.

11. The applicant filed rejoinder reiterating most of his contentions made in the M.A.

12. This Tribunal heard the arguments advanced by the learned counsel for the applicant as also the R.P who appeared in person through video conferencing and have thoroughly perused all the papers placed on record.

13. The short question that arises for consideration is whether the claim put forward by the applicant before the R.P can be entertained by the R.P in view of the facts and reasons stated in the application and the counter filed by the Respondent.

14. On verification of records, it is seen that the applicant claimed that his salary was raised from Rs. 1,05,000/- per month to Rs. 12,05,000/- per month with effect from 01st April, 2016. However, from the records produced by the applicant, it is not clear as to revision of salary and that the ledger do not say that how much amount every month credited to his salary account being the salary for every month. In order to consider and settle the claim of the applicant, the Resolution Professional on 02.11.2020 sent a letter to the applicant which reads as under:

"1. You had submitted the claim for salary of Rs 12,05,000/- (Rupees Twelve Lakh Five Thousand Only) per month from August, 2017 to April, 2019 as well as allowances such as privilege leave, PF and gratuity. However, during verification, it was found that the salary due entries are not passed in the ledger of Mr. P Jayagovind from FY 2017-18 onwards. On enquiry, Mrs. Bijimol Joseph, the Accountant of the Corporate Debtor had informed the RP that you were drawing gross salary of Rs 1,05,000-per month till 31st March, 2016 and were paid an incremented salary of Rs12,05000/- (Rupees Twelve Lakh Five Thousand Only) per month with effect from 01April, 2016. However, based on the instruction of Mrs. P V Mini, the suspended Managing Director of the

Corporate Debtor, the salary had been revised to the earlier scale of Rs 1.05.000/- (Rupees One Lakh Five Thousand Only) per month with effect from 01st January, 2018. However, you had submitted the claim for salary from August, 2017 till April, 2019 with the enhanced scale of Rs. 12,05,000/- (Rupees Twelve Lakh Five Thousand Only) per month. The claim on the allowance payable are also calculated by taking the salary as Rs. 12,05,000 (Rupees Twelve Lakh Five Thousand Only) per month. The RP had relied on the relevant records of the Corporate Debtor as well as the internal information shared with him while conducting the verification of the claim. Based on the same, the RP had recomputed the salary and allowances payable to the claimant in view of the information available on record, which amounts to Rs. 91,10,085. Also, an amount of Rs. 1,11,08,088/- (Rupees One Crore Eleven Lakh Eight Thousand and Eighty-Eight Only) is shown as paid in advance to Mr. Jayagovind as per the ledger data. Upon setting-off these figures, there is a net balance of Rs 19,98,003/- (Rupees Nineteen Lakh Ninety-Eight Thousand and Three Only) receivable from the claimant, the details of which is tabulated hereunder. The ledger for the FY 2017-18 and 2018-19 is also attached herewith for your reference.

2. *Also, the amount claimed as Provident Fund is inadmissible as the amount of Provident fund payable to the employees is claimed by the Employees Provident Fund Organization. In order to avoid duplication, the claim for the PF portion included in Form D 1 is considered as inadmissible.*

3. *In view of the aforementioned submissions, the RP had rejected the entire claim amount of Rs. 3,09,45,200 submitted by Mr. P Jayagovind.*

Detailed calculation notes on the eligible claim amount

Claim no. PVS/D/406

Name: P Jayagovind

<i>Breakup of claim submitted</i>	<i>Amount (Rs)</i>
<i>a. Salary from August 2017 to April 2019</i>	<i>2,52,67,200</i>
<i>(Rs 12,05,000 less pf 1800 x 21 months)</i>	

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b. Privilege leave (90 days)	36,15,000
c. Employer and employee PF	63,000
d. Gratuity for 22 years	20,00,000
Total claim	3,09,45,200

Recomputed eligible claim amount (as per books) Amount (Rs)

a. Salary from August to December 2017 (Rs 12,05,000 less pf 1800 x 5 months)	60,16,000
b. Salary from January 2018 to April, 2019 (Rs 1,05,000 less pf 1800 x 16 months)	16,51,200
c. Privilege leave	
a. (Rs 1,05,000/30 x 90)	3,15,000
Last drawn salary for privilege leave Rs 105,000	
b. Gratuity	11,27.88.5
(Rs 85,000 x 15/26 x 23)	
Last drawn salary for Gratuity computation Rs 85,000	
Completed years of service - 23	

Total eligible salaries and allowances 91,10,085

**Advance given to Mr P Jayagovind as per books
(1,11,08,088)**

Net amount receivable from Claimant 19,98,003

On verification, it is found that you were the General Manager, Finance, of the Corporate Debtor having privy to the various financial records of the Corporate Debtor. Therefore, if you manage to submit any documentary evidence other than salary increment certificate submitted via email on 16" October, 2020 to substantiate your claim to the RP at the earliest, we will reconsider it after due verification with the books of accounts and other relevant records of the Corporate Debtor.

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Also, the RP had, vide the email dated 16th October, 2020, requested you to send your bank statement for the past few years to which the salary from the Corporate Debtor were credited in order to effectively look into the matter. However, the document called for is not submitted till date. You are requested to submit the bank statements at the earliest.

Please note that the RP had already received the Resolution Plan from the Prospective Resolution Applicant and the plan is under the consideration of the Committee of Creditors and the RP will be able to reconsider the claim only till the approval of the Resolution Plan by the Committee of Creditors. In view of the above, you are requested to submit the documents without any delay.”

15. Since the Resolution Professional (R.P) had already received Resolution Plan from the prospective Resolution Applicant and the same is under consideration of the Committee of Creditors; the applicant is directed to submit all the documents requested for by the Resolution Professional through his letter dated 02.11.2020, without fail, in any case within two weeks from today. If the applicant produces the documents sought for by the R.P within two weeks, the R.P is directed to explore all possibilities to settle the claim of the applicant and give a reply to the applicant before finalisation of the Resolution Plan.

16. With the above directions, **MA/177/KOB/2020 in TIBA/11/KOB/2019 is disposed of.**

Dated the 14th day of December, 2020

Sd/-
(Ashok Kumar Borah)
Member (Judicial)