

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

IA (IBC)/282/KOB/2024

IN

CP(IBC)/22/KOB/2024

*(Under Section 60(5) of Insolvency &
Bankruptcy Code, 2016 read with Rule 11 & 32
of NCLT Rules, 2016)*

In the matter of:

Attukal Devi Institute of Medical Sciences
Limited

MEMO OF PARTIES:

Mr. Ranjit Karthikeyan, 27/547-1,
Madhavilakom, Thampuramukku,
Vanchiyoor PO, Thimvananthapuram,
Kerala— 695035

... Applicant

-Vs-

Ayyappan Nair Raghavan Pillai, T.C
6/773-1, Pranavam, Akkulam Road,
Medical College P.O
Thiruvananthapuram, Kerala, India-
695011

...Respondent 1/ Financial Creditor

Attukal Devi Institute of Medical Sciences
Limited, T.C 22/935 (2 TO 5), Attukal,
Manacaud P.O, Thiruvananthapuram,
Kerala, India- 695009

... Respondent 2/ Corporate Debtor

Order delivered on: 19.07.2024

- on 19.04.2024, claiming that he had advanced a total loan of INR 1,52,03,000/- to the Corporate Debtor in 2015.
3. The Corporate Debtor is a public company limited by shares, incorporated on 14.11.2007 having its registered office in Thiruvananthapuram, Kerala. Its main objectives include establishing and running healthcare facilities, conducting medical research and training, and promoting medical tourism.
 4. The applicant contends that Respondent No.1, as Chairman and Managing Director of the Corporate Debtor, drove it to the brink of bankruptcy through neglect and personal interests. The new management has since revived the company, leading Respondent No.1 to make malicious attempts to destabilize the Corporate Debtor, including attempt to induct his counsel to Board.
 5. The applicant also submitted that the Petition against the Corporate Debtor was filed maliciously for ulterior motives involving fraud and deceit. The claim in the Petition is unsubstantiated, inflated, and unsustainable, with the Petitioner guilty of grossly suppressing facts.
 6. It is submitted that the Petitioner was elected as the Chairman of the Corporate Debtor at the Second Meeting of the Board Directors held on 24.03.2008. The Petitioner was elected as Chairman and Managing Director of Corporate Debtor, giving him total control. He executed documents in his favor and now seek to initiate CIRP with unsubstantiated claims, showing fraudulent and malicious intent. This conduct abuses the process.

7. In 54th Board Meeting held on 06.02.2016, the Board decided to take steps as a measure towards exercising stringent financial policy including to freeze all payments to Directors in respect of interest on Director's advances; to freeze any fixed remunerations paid other than professional fees; and to freeze payment of travelling expenses to Board of Directors. In the same meeting the Petitioner stepped down from his position of Chairman and Managing Director and Dr. D.M. Vasudevan was appointed as the new Chairman and Managing Director.
8. The Board resolutions dated 31.03.2018, 23.03.2019, 17.12.2020, 08.03.2022, 14.06.2022, and 07.06.2023 froze payments to Directors for interest on advances. Corporate Debtor is not obligated to pay interest as per said resolutions, which the Petitioner, a director, has not contested.
9. The learned counsel for the applicant has relied upon the decision of Hon'ble NCLAT in ***SREI Infrastructure Finance Ltd. v. Right Tower Pvt. Ltd.***, 2018 SCC OnLine NCLAT 588 and the decision of NCLT, Kolkata Bench in ***Ahluwalia Contracts India Limited v. Shrishti Infrastructure Development Corporation Limited*** Order dated 28.06.2022 passed in IVN.P.7/KB/2021 in CP(IB) No. 2/KB/2021 and submitted that the Applicant has the right to intervene in the underlying proceedings before this Adjudicating Authority.
10. Counsel for the Financial Creditor made oral submission that the Intervention Petition is not maintainable, and cited vide order dated 28.06.2024 in **IA(IBC)/259/KOB/2024** in

- CP(IBC)/22/KOB/2024** an Intervention Petition dismissed by this Adjudicating Authority.
11. We have heard the counsel for the parties and have gone through the records.
 12. At the stage of admission of a petition under Section 7 or 9, only the Corporate Debtor and the Financial Creditor are necessary parties to be heard. Third Parties, including intervenors, have no right to be heard at this stage. Any submissions regarding fraud, deceit, fraudulent or malicious initiation of CIRP u/s 65 of IBC,2016 has to be made by the Corporate Debtor through their authorized representative. Multiple representations in matter of CIRP cannot be entertained as transaction is between Corporate Debtor and Financial Creditors only.
 13. We are relying on ***Deb Kumar Mujumdar Vs. State Bank of India Company Appeal (AT) (Ins.) No. 44/2018*** whereby it was held by the Hon'ble NCLAT that no person has a right to claim for hearing except the Corporate Debtor at the stage of application filed under Section 7 of the IBC,2016 and no other financial creditor or operational creditor is required to be heard at that stage.
 14. In ***Company Appeal (AT) (Ins.)676 of 2019 L&T Infrastructure Finance Company Ltd. Vs Gwalior Bypass Project Ltd.*** whereby also the similar view was taken while holding that a member/shareholder has no right to intervene to oppose admission of application under section 7.
 15. In our considered view, at the stage of admission in a petition under Section 7 of the Code, ordinarily no intervention is permissible as

- has been held by the Hon'ble NCLAT and by the previous order of this Adjudicating Authority in the **IA(IBC)/259/KOB/2024** in **CP(IBC)/22/KOB/2024**.
16. The Applicant has no locus-standi in the matter of the Corporate Debtor, which is pending before this Adjudicating Authority under Section 7 of IBC, 2016. The Corporate Debtor has already submitted the reply in Company Petition. The Director of the Corporate Debtor is not a necessary party in the petition; any submission regarding the same can be made by the Corporate Debtor only. Hence, the application is not maintainable.
 17. In view of the aforesaid, the **IA(IBC)/282/KOB/2024** is **dismissed** and **disposed of** accordingly.
 18. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.
 19. Let the certified copy of the order be issued upon compliance with requisite formalities.
 20. File be consigned to records.

Sd/-
RAVICHANDRAN RAMASAMY
(MEMBER TECHNICAL)

Sd/-
T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this, the 19th day of July, 2024.