

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

**M.A.184/KOB/2020**

**in**

**TIBA/07/KOB/2019**

(Under Section 60(5)(a) of IBC 2016)

Date of decision: 20<sup>th</sup> April, 2021

**CORAM**

***HON'BLE MR. ASHOK KUMAR BORAH, MEMBER (JUDICIAL)***

**Applicant:**

CA JASIN JOSE,  
LIQUIDATOR OF SARGAM BUILDERS PVT.LTD.  
PONMATTAM MADASSERY  
MOOKKANNOOR PO-683577  
ANGAMALY.ERNAKULAM DISTRICT.

Versus

**Respondents:**

Mr. V.K. Abdul Rahim,  
Suspended Managing Director,  
M/s Sargam Builders Pvt.Limited (under Liquidation)  
2813858 D, Sargam House, Waterland Road,  
Elamkulam, Cochin, Kerala-682020.

**Parties/Counsel appeared (through Video Conferencing)**

For applicant : Mr. Jasin Jose, Liquidator in person  
For Respondent : Mr. S.Easwaran, Advocate

**ORDER**

This MA/184/KOB/2020 has been filed under Section 60(5) (a) of I&B Code,2016 by the Liquidator in the matter of Sargam Builders (P) Limited against

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Mr. V. K Abdul Rahim [Suspended Managing Director of the Corporate Debtor],

seeking the following reliefs: -

- I. Direct Mr VKA Rahim Suspended Managing Director-Sargam Builders Pvt Ltd(Under Liquidation) to Credit back immediately without any fail the money belongs to the company (Rental Income for the Month of October2020) to the account of the company and to revoke the fraudulent instruction given to Dxn Marketing India Private Limited the tenant of Sargam Builders Pvt Ltd (Under Liquidation) on 17/09/2020 to transfer the Monthly Rent belongs to the company to credit to the Suspended Managing Directors Personal Account in Federal Bank
- II. To cancel the renewal agreement entered by the Corporate Debtor on 05/10/2020 (After Liquidation Order) in his wrong Capacity as Managing Director of Sargam Builders Pvt Ltd during the liquidation period and to renew the same agreement with same terms and conditions with the authorisation of Liquidator and mentioning the fact that the company is under liquidation.
- III. Direct both the Suspended Directors and Company Website Maintenance Engineers M/s Metexcreations, 57/24A. Metexlane, Ponneth, Temple Road, Kadavnthara, Cochin-682020, Phone-91881711 to publish the FORM B (Public Announcement) in Company Website.

The brief facts are thus: -

2. The application TIBA/7/KOB/2019 filed by M/s. Federal Bank Limited for Corporate Insolvency Resolution Process under Section 7, of the Insolvency and Bankruptcy Code read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 was admitted by this Tribunal on 20.09.2019.

3. It is stated in the application that on 16.09. 2020 this Tribunal allowed the Liquidation Application under Section 33(2) of I& B Code,2016. On 24.09.2020 the Applicant made public announcement in Form B in two newspapers i.e. in Indian Express and Deshabhimani. The Applicant also requested through e-mail the Respondent suspended Director and Mr. Antony the Company Staff to publish the Form B in the Company website. However, the Respondent denied to publish the Form B stating that he intended to file an Appeal against the Liquidation Order. He had also emailed to the Company Website Maintenance Engineers M/s Metexcreations,57/24A, Metex Lane, Ponneth Temple Road, Kadavnthara, Cochin-682020, Phone: 918817115 to publish the FORM B in company website but they have denied stating the reason they should receive the mail from company email ID.

4. The Applicant further stated that the Corporate Debtor under Liquidation is basically doing business of construction and development of flats. The company has successfully completed one project in Aluva and the Second project announced in 2009-10 and for that project only underground piling work has completed and the project is stalled since 2011 and presently the project site is a barren land with no structures above ground level. The company owns two shop rooms Door No 40/1803C27 in DD Oceanomall, Marine Drive, Kochi and one shop room is vacant and at present company has got revenue only from one shop room and it is the only source of revenue to

the Company. The shop room is leased to DXN Marketing India Pvt Ltd for a monthly rent of Rs 41055/-The monthly rent for the same was crediting to the current account –No. 1859201000775 of Sargam Builders Pvt Ltd in Canara Bank Kadavanthra till the month of September 2020. The monthly rent for the period October 2020 was not credited to the account. As per Regulation 41 of IBBI [Liquidation Process] Regulations,2016 the liquidator opened a bank account for receipt of all moneys due to the Corporate Debtor. Liquidator personally visited the tenant and requested him to deposit to the account ‘Sargam Builders Pvt Ltd in Liquidation’ at Federal Bank, Alwaye. But it came to know that the Respondent given instruction to the Tenant to credit the Rent on his personal Account.

5. It is also stated that on 5<sup>th</sup> October,2020 the rent agreement was renewed of the Suspended Director in the capacity as Managing Director of Sargam Builders Pvt Ltd. hiding the facts the company is under Liquidation. The Applicant has repeatedly requested Respondent and Mr. Antony the office in charge to hand over the Rental agreements of both shop rooms to the Liquidator. But without any success. Hence, the Application filed the Application for the aforesaid reliefs.

6,       The Respondent Suspended Managing Director filed a reply and stated that there are several illegalities in the meetings conducted by the

official liquidator in his capacity as IRP and the same requires to be adjudicated by the Tribunal.

7. It is also stated that as per agreement dated 13.8.2019 before the liquidation order, the lease existing was renewed for a further period of 11 months and is due to expire on 30.6.2020. Hence, it is stated that the said lease is valid since the same is executed prior to the Liquidation order passed on 16.9.2020. The Respondent admitted that the instruction given to the lessee to transfer the monthly rent to his account and execution of renewal agreement were mistakes committed by him. As soon as the mistake of facts came to the Respondents notice, he had cancelled the said instruction on 21.11.2020 and the said agreement on 4.12.2020. which was intimated to the lessee

8. This Tribunal heard the arguments advanced by the learned liquidator as also the learned counsel for Respondents through video conferencing and had gone through the averments made by both the parties in this Application.

9. This Application has been filed to transfer the monthly rent to the account 'Sargam Builders Pvt Ltd in Liquidation' at Federal Bank, Alwaye. The Respondent admitted his mistake and stated that the instruction given to lessee to transfer the monthly rent to the suspended Managing Director's account and execution of renewal agreement were cancelled and this was duly intimated to the lessee M/s. Dxn Marketing India Private Limited.

10,. The Respondent has produced a copy of the mail sent to M/s. Dxn Marketing India Private Limited stating that the Company cancelling transfer the monthly rent to the Company's account at 'Canara Bank, Kadavanthra'. Moreover, he has also produced a letter dated 04.12.2020 cancelling the rental agreement dated 05.10.2020 for the period from 01.07.2020 to 31.05.2021.

11. As far as the 3<sup>rd</sup> prayer is concerned it is clear that the Liquidator made the Public Announcement in two newspapers within 5 days of from his appointment. However, even though requested by the Liquidator the Respondent has not published the same in the website of the corporate debtor till now.

12. At this juncture, it is pertinent to note the provision of Section 33 (7) of the I&B Code that deals with the Initiation of Liquidation as under: -

***(7) The order for liquidation under this section shall be deemed to be a notice of discharge to the officers, employees and workmen of the corporate debtor, except when the business of the corporate debtor is continued during the liquidation process by the liquidator.***

13. On a perusal of the above provision it is clear that, all powers of the Board of Directors, key managerial persons and the partners of the Corporate Debtor shall cease to effect and vest in the Liquidator and that if the business of the Corporate Debtor is continued during liquidation process, the personnel of the Corporate Debtor have to extend all co-operation to the Liquidator as may be required by him in managing the affairs of the Corporate Debtor.

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14. Since the Respondent has cancelled the rent agreement with M/s. Dxn Marketing India Private Limited for the period from 01.07.2020 to 31.05.2021 and directed them to remit the amount to company's account maintained at the Canara Bank, Kadavanthra'. No further direction to that effect is required except to direct the suspended Managing Director to remit the rent received by him from October 2020 to the account maintained by the Liquidator at Federal Bank, Alwaye.

15. Regarding the 3<sup>rd</sup> prayer since the suspended Managing Director and the website maintenance engineers have not published the Form B in the Company's website, they should be directed to do so immediately.

16. In view of the aforesaid findings this MA is disposed of with the following directions: -

- I. The Respondent Suspended M.D shall forthwith remit the monthly income received as rent from Dxn Marketing India Private Limited to the account maintained by the Liquidator at Federal Bank, Alwaye Branch as 'Sargam Builders Private Limited in Liquidation'
- II. The Respondent is also directed to publish Form B (Public Announcement) in the Company's website through the website Maintenance Engineers M/s Metexcreations.
- III. Both the above directions shall be complied with, within 10 days from the date of receipt of this order.
- IV. Registry is directed to communicate this order to the 1<sup>st</sup> Respondent through e-mail urgently.

Dated this the 20th day of April,2021

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