

W.P.(C)No.15670 of 2024



2025:KER:52039

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

THURSDAY, THE 17TH DAY OF JULY 2025 / 26TH ASHADHA, 1947

WP(C) NO. 15670 OF 2024

PETITIONER:

JAJU BABU
AGED 66 YEARS
MAKAM, ST ALBERTS HIGH SCHOOL LANE, BANERJEE ROAD,
ERNAKULAM, PIN - 682035

BY ADV SHRI.TERRY V.JAMES
SRI P.B.KRISHNAN (SR.ADVOCATE)

RESPONDENTS:

- 1 NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH GROUND FLOOR, COMPANY LAW BHAVAN BMC
ROAD, THRIKKAKARA P.S. KAKKANAD, KOCHI, KERALA REP
BY DEPUTY REGISTRAR, PIN - 682021
- 2 PHOENIX ARC PRIVATE LIMITED
5TH FLOOR, DANI CORPORATE PARK, 158, CST ROAD,
KALINA, SANTACRUZ (E), MUMBAI REPRESENTED BY ITS
AUTHORISED SIGNATORY MR. HARSH MAGIA, PIN - 400098
- 3 MR. JOSSY STEPHEN KATTUR
RESOLUTION PROFESSIONAL OF KERALA CHAMBER OF
COMMERCE & INDUSTRY BARONS 16C, SKYLINE IMPERIAL
GARDENS, KALOOR, ERNAKULAM, PIN - 682025
- 4 M/S. DAVIDROOTS LLP
REPRESENTED BY ITS MANAGING PARTNER MR. ARUN DAVID
3XXI/185 G, DAVIDS ARCADE, BYPASS JUNCTION, A.M.
ROAD, THANKALAM. KOTHAMAGALAM, KERALA, PIN - 686691

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5 MS. ANNAMMA CHERIYAN
FLAT NO.44, ASHOKA APARTMENTS, SHANMUGHAM ROAD,
ERNAKULAM, PIN - 682031

6 DR. THOMAS MATTATHIL
MATTATHIL HOUSE KIZHAPARAYAR P.O., POOVARARANI
VILLAGE, KOTTAYARN DISTRICT, PIN - 686578

BY ADVS.
SHRI.SURESH DUTT DOBHAL
SHRI.AKHIL SURESH
SHRI.SHIKHAR KUMAR
SHRI.NIDHI SAM JOHNS
SHRI.HARIKUMAR G. (GOPINATHAN NAIR)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10.04.2025, THE COURT ON 17.07.2025 DELIVERED THE FOLLOWING:



T.R. RAVI, J.

W.P.(C)No.15670 of 2024

Dated this the 17th day of July, 2025

JUDGMENT

The prayer in this writ petition is to quash Ext. P5 final order passed by the 1st respondent, and to issue consequential directions. By Ext.P5, the 1st respondent has directed the 3rd respondent, the Resolution Professional, to reject the claim filed by the home buyers, including the petitioner and thus allowed the interlocutory application filed by the 2nd respondent in IA/310/KOB/2023 in CP(IBC)/33/KOB/2021.

2. The petitioner is an allottee/homebuyer in Kerala Trade Centre at Marine Drive, Cochin. He had entered into an agreement for sale and construction with the corporate debtor. The corporate debtor in their capacity as the builder and the landowner M/s.Cherupushpam Films Pvt. Ltd., entered into an agreement on 8.12.2003, to construct a building named Kerala Trade Centre at Marine Drive, Cochin on a land having an extent of 43.35 Ares.



Loans were availed for the construction from the South Indian Bank, Ernakulam. Sale deeds were executed by the landowners in favour of the petitioner and respondents Nos. 4, 5 and 6. The bank had charge over the property when the sale deeds were executed, though the same were not reflected in the encumbrance certificates.

3. The 2nd respondent as the financial creditor, filed a petition before the first respondent on 10.10.2022, seeking to initiate proceedings against the corporate debtor. All creditors, including the petitioner, filed their claims before the Resolution Professional, and the same were adjudicated by him as per law. In the first CoC meeting, it was agreed that the petitioner, as well as other similarly placed creditors, were to be included in the CoC. Consequently, they were made members of the CoC. The 2nd respondent is also a member of the CoC.

4. The 2nd respondent filed IA(IB)/3010/KOB/2023 in CP/IBC/33/KOB/2021 praying for a rejection of the claim of the home buyers/space buyers/respondents 2 to 5, who already had registered allotments in their favour, and to reconstitute the CoC with valid voting share proportionate to the claim amounts and to



stay all further proceedings of the CoC till the reconstitution of a valid CoC with valid voting share proportionate to the claim amount. Ext.P1 is a copy of the petition. According to the 2nd respondent, the 3rd respondent Resolution Professional, had, wrongly admitted the claims of various home buyers who already are title holders of the property, based on the registered sale deeds executed in their favour, and made the petitioner and respondents 4 to 6 as members of the CoC with decisive voting rights.

5. The petitioners and others filed their objections to Ext.P1, a copy of which has been produced as Ext.P2. The Resolution Professional had also filed a counter-affidavit, a copy of which has been produced as Ext.P3. The 1st respondent heard the application and reserved the case for orders on 28.2.2024. This fact is evident from Ext.P4 daily order issued by the 1st respondent.

6. After the case was taken for orders, the 2nd respondent filed an affidavit on 8.3.2024 before the 1st respondent agreeing "not to enforce its charge/mortgage rights on the units/flats purchased by the petitioner and respondents 4 to 6 from the



corporate debtor/Kerala Chamber of Commerce and Industries subject to the condition that the petitioners and respondents 4 to 6 are not treated as financial creditors and do not remain as members of the CoC so that the 2nd respondent being a financial creditor will get its actual representation/voting right in all the future/forthcoming meetings of the CoC.” On 09.05.2024, the 1st respondent, taking note of the above affidavit dated 8.3.2024, passed a final order directing the Resolution Professional to reject the claim of the home buyers/petitioners and respondents 4 to 6 and to reconstitute the CoC with valid representations/voting share proportionate to their claim amounts. The case of the petitioner is that the orders have been issued based on an affidavit filed after the hearing was over, and without granting an opportunity to the petitioner to make his submissions on the affidavit. Ext.P5 is the final order dated 9.4.2024 issued by the 1st respondent.

7. The 2nd respondent has filed a counter affidavit. It is contended that the petitioner has an efficacious remedy of appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('IBC 2016' for short), and hence is not entitled to maintain this writ petition. It is contended that the allottees in whose favour



registered title deeds have already been executed can no longer be members of the CoC since their properties do not form part of the assets of the corporate debtor anymore, and claims of such allottees against the corporate debtors stood satisfied on receiving due title and possession. According to the 2nd respondent, such rights were included in the CoC illegally. It is further submitted that the 2nd respondent does not intend to take any action against people like the petitioner, provided they also do not remain as members of the CoC. It is contended that IBC 2016 is a complete Code in itself, and in view of the decision of the Apex Court, no writ petition can be maintained against the order of the 1st respondent. The details of the amounts owed to the 2nd respondent have also been narrated in the counter affidavit. It is also stated that even though the affidavit was filed, no counter affidavit was filed for more than a month, despite the copy of the same being served on the petitioner. It is also submitted that the affidavit only reiterates what had already been stated before the 1st respondent and does not contain any additional material.

8. Heard Sri P.B.Krishnan, Senior Advocate, instructed by Sri Terry V. James for the petitioner, Sri Suresh Dutt Dobhal, for



the 1st respondent and Sri Harikumar G., for the 2nd respondent.

9. In **Innoventive Industries Limited v. ICICI Bank & Anr. [(2018) 1 SCC 407]**, the Hon'ble Supreme Court has held that the IBC 2016 is a complete Code in itself. It was held that one of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up the insolvency process. According to the counsel for the 2nd respondent, the petitioner has not given any explanation as to why an appeal is not being preferred as provided under the Code. In **Phoenix ARC Private Ltd. v. Vishwa Bharati Vidya Mandir & Ors. [(2022) 5 SCC 345]**, the Hon'ble Supreme Court considered the maintainability of a writ petition under Article 226 in a matter arising under the SARFAESI Act. The Hon'ble Supreme Court held that the High Court had erred in entertaining a writ petition in a matter relating to the SARFAESI Act when there is a statutory remedy available under Section 17 of the SARFAESI Act. The appellant before the Hon'ble Supreme Court is the 2nd respondent herein.

10. In **Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India**



& Ors. [(2019) 4 SCC 17] and **Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company [2021 SCC OnLine SC 313]**, the Hon'ble Supreme Court held that the IBC 2016 being a self-contained Code, the High Courts should refrain from interfering with the resolution process.

11. This Court had considered the question of maintainability in **Tharakan Web Innovations Pvt. Ltd. (M/s.) & Anr. v. National Company Law Tribunal, Kakkanad & Ors. [2022 SCC OnLine Ker 498]** and held that the availability of an alternate remedy will not be a reason for not exercising jurisdiction when there is a violation of principles of natural justice or where the proceedings challenged are without jurisdiction. In the case at hand, admittedly, the final hearing on the petition was over, and the case was taken for orders on 28.2.2024. A reading of Ext.P5 would show that the order has been rendered based on the affidavit filed on 8.3.2024, the details of which have been extracted in paragraph 24 of the order. It is also evident from paragraph 27 of the order that the Tribunal has taken the affidavit on record and issued the directions for removing respondents 2 to 5, who were the home buyers/space buyers, from the CoC. It can



be seen from the minutes of the first CoC meeting produced along with Ext.P3 counter affidavit, that the financial creditor confirmed that the claims of home buyers who have already registered sale deeds without NOC from the secured financial creditors can also be treated as financial creditors. The claim of persons like the petitioner was accepted in 2022 in the presence of the secured creditor, and that is the reason why the petitioner is challenging his removal from the CoC. A copy of the affidavit that has been produced as Ext.R2(h) specifically says that they would not enforce their claim against persons like the petitioner on condition that they are not treated as financial creditors and do not remain as members of the CoC.

12. It is evident from the admitted facts that the 1st respondent has accepted and recorded the affidavit which was filed after the hearing, and the order itself has been issued relying on the contents of the said affidavit. Since the petition was a contested one and had been argued and taken for orders, the 1st respondent ought to have heard the petitioner and similarly situated persons on the contents of the affidavit. This is all the more so since the prayer in the application was virtually to review



the earlier decision of the CoC to include the petitioner and other holders of registered sale deeds as financial creditors on the admission of the senior creditor. Since it is an order passed in violation of the principles of natural justice, it is only appropriate that the same is set aside and the matter is remanded back to the 1st respondent for passing orders after hearing the petitioner and other similarly situated persons on the contents of the affidavit and on the proposal to record the same and pass orders.

13. The writ petition is allowed. Ext.P5 is set aside. The 1st respondent is directed to pass fresh orders, after hearing the petitioner on the contents of the affidavit filed by the 2nd respondent, after the matter was taken for orders earlier. The period from 11.04.2024 to the date of this judgment shall stand excluded from the time fixed for completion of the resolution process.

Sd/-
T.R.RAVI
JUDGE

APPENDIX OF WP(C) 15670/2024

PETITIONER EXHIBITS

EXHIBIT P1 A TRUE COPY OF IA(IB)/310/KOB/2023 FILED BY THE 1ST RESPONDENT IN CP/IBC/33/KOB/2021

EXHIBIT P2 A TRUE COPY OF THE REPLY FIELD BY THE 2 TO 5TH RESPONDENT

EXHIBIT P3 TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE 3RD RESPONDENT

EXHIBIT P4 TRUE COPY OF THE DAILY ORDER IN IA(IB)/310/KOB/2023 DATED 28.02.2024

EXHIBIT P5 TRUE COPY OF THE FINAL ORDER DATED 09.04.2024

RESPONDENT EXHIBITS

EXHIBIT R2 (A) TRUE COPY OF THE BOARD RESOLUTION DATED 22.03.2024, IN FAVOUR OF MR. HARSH MAGIA

EXHIBIT R2 (B) TRUE COPY OF EMAIL DATED 28.04.2023, SENT BY PHOENIX ARC TO THE RESOLUTION PROFESSIONAL

EXHIBIT R2 (C) RUE COPY OF REPLY EMAIL DATED 30.04.2023, SENT BY RESOLUTION PROFESSIONAL TO PHOENIX ARC

EXHIBIT R2 (D) TRUE COPY OF APPLICATION BEARING I.A. NO. 310/2023, FILED BY PHOENIX ARC PVT LTD

EXHIBIT R2 (E) TRUE COPY OF REPLY FILED BY RESOLUTION PROFESSIONAL TO THE APPLICATION BEARING I.A. NO. 310/2023 FILED BY PHOENIX ARC BEFORE NCLT, KOCHI

EXHIBIT R2 (F) TRUE COPY OF REPLY FILED BY ALLOTTEES (INCLUDING PETITIONER) WITH REGISTERED TITLE DEEDS TO APPLICATION BEARING I.A. NO. 310/2023, FILED BY PHOENIX ARC

EXHIBIT R2 (G) TRUE COPY OF ORDER DATED 28.02.2024, PASSED IN IA NO. 310/2023, BY LEARNED NCLT

EXHIBIT R2 (H) TRUE COPY OF AFFIDAVIT DATED 06.03.2024, FILED BY PHOENIX ARC BEFORE LEARNED NCLT IN I.A. NO. 310/2023, ALONG WITH PROOF OF SERVICE UPON PETITIONER AND OTHER



ALLOTTEES

EXHIBIT R2 (I)	TRUE COPY OF PROOF OF FILING THE AFFIDAVIT DATED 06.03.2024, IN IA NO. 310/2023, BEFORE NCLT
EXHIBIT R2 (J)	TRUE COPY OF WRITTEN SUBMISSIONS ALONG WITH AFFIDAVIT DATED 06.03.2024, FILED BY PHOENIX ARC IN IA NO. 310/2023, BEFORE LEARNED NCLT
EXHIBIT R2 (K)	TRUE COPY OF ORDER DATED 09.04.2024, PASSED IN IA NO. 310/2023, BY NCLT
EXHIBIT R2 (L)	TRUE COPY OF EMAIL DATED 20.06.2024, ISSUED BY PHOENIX ARC TO RESOLUTION PROFESSIONAL
EXHIBIT R2 (M)	TRUE COPY OF EMAIL DATED 21.06.2024, SENT BY RESOLUTION PROFESSIONAL TO PHOENIX ARC
EXHIBIT R2 (N)	TRUE COPY OF EMAIL DATED 22.06.2024, ISSUED BY PHOENIX ARC TO RESOLUTION PROFESSIONAL