



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

IA(IBC)/2/KOB/2026

IN

IA(IBC)/379/KOB/2025

IN

CP(IB)/22/KOB/2024

*(Under Section 424 (2) of the Companies Act, 2013,
read with Rule 52,32 and 11 of the NCLT Rules, 2016)*

Date of Institution:05.01.2026

Order Delivered on:27.02.2026

In the matter of:

***M/s ATTUKAL DEVI INSTITUTE OF MEDICAL
SCIENCES LIMITED***

Memo of Parties:

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

.... Applicant

Vs.

**1. CoC of M/s Attukal Devi Institute of Medical
Sciences Limited**

Represented through
Managing Director Dhanlaxmi Bank Limited
T.C. 41/2343(4), Malson Tower, Manacaud,
Thiruvananthapuram- 695009

... Respondent No. 1



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2. Mr. CA Rajmohan R

RP of M/s. Attukal Devi Institute of Medical
Sciences Limited
Raj Bhavan House, HS Mo 514/12-1 &
175A, St. No. 6, Krishnapuram,
Ollukkara P.O Thrissur, Kerala- 680655.

... Respondent No. 2

**3. Attukal Devi Institute of Medical Sciences
Limited**

Represented through its RP,
Mr. CA Rajmohan R,
Raj Bhavan House, HS Mo 514/12-1 & 175A,
St no. 6, Krishnapuram, Ollukkara P.O
Thrissur, Kerala- 680655.

... Respondent No. 3

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

Appearance:

For the Applicant : Mr. Bijoy Pulipra, Advocate

For the Respondent No. 1 : Mr. Vinod P V, Advocate

For the Respondent Nos. 2 & 3: Mr. A C Venugopal, Advocate

Mr. Rajmohan R, Resolution Professional

ORDER

1. This Application has been filed by the Unsuccessful Resolution Applicant in IA(IBC)/379/KOB/2025 under Section 424(2) of the Companies Act, 2013, read with Rules 52, 32, and 11 of the NCLT Rules, 2016, seeking the



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following reliefs:

- i. Allow the present Application and direct the issuance of summons/notice under Rule 52 of the National Company Law Tribunal Rules, 2016, to summon and enforce the attendance the Authorised Representative of Attukal Bhagavathy Temple Trust, having address at P.B.NO.5805, ATTUKAL, MANACAUD P.O., THIRUVANANTHAPURAM, PIN-695 009, E-mail: attukaltemple@gmail.com to appear before this Hon'ble Tribunal as a witness through a duly authorised representative, in terms of Rule 52 of the National Company Law Tribunal Rules, 2016 read with Section 424 of the Companies Act, 2013;*
- ii. Allow the Applicant to examine the Authorised Representative of Attukal Bhagavathy Temple Trust on oath, in accordance with Section 424 of the Companies Act, 2013;*
- iii. Allow marking and taking on record of documents produced by the Attukal Bhagavathy Temple Trust during the course of such examination, subject to proof and admissibility;*
- iv. Allow the evidence so recorded shall form part of the record in IA (IBC) No. 379/KOB/2025 and shall be considered while adjudicating the procedure lapses at the end of the Respondents while considering the Resolution Plan for approval.*

2. Brief facts of the case are as follows:

- i. In the present interlocutory application, the Applicant relied on the facts stated in IA (IBC) No. 379/KOB/2025, wherein the Applicant challenged the arbitrariness, lack of transparency, and procedural lapses of the Committee of Creditors ('CoC') in selecting the Resolution Plan.**
- ii. The Applicant submitted that IA(IBC)/379/KOB/2025 arised from the arbitrary and discriminatory approval of Dr. M. Ayyappan's Resolution Plan, Successful Resolution Applicant (Plan B), by the sole voting member of the CoC, in violation of the Evaluation Matrix, Section 30 of the IBC 2016, and settled judicial principles. The approval is vitiated by material irregularities, including impermissible post-bid revisions,**



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- inflated and contingent allocations, and unequal treatment of similarly placed creditors. Although the Applicant's Plan (Plan A) ranked highest on value and qualitative parameters, it was rejected.
- iii. The Corporate Debtor is a tenant in premises leased from M/s. Attukal Bhagavathy Temple Trust ('ABTT' or the 'Lessor'). The Applicant has referred to ongoing litigation between ABTT and the Corporate Debtor pending before various forums, including Civil Courts, the Rent Controller, this Adjudicating Authority, and the Hon'ble High Court of Kerala. The matters before the Hon'ble High Court of Kerala have been disposed of.
- iv. The Applicant submitted that the Rent Control Court, Thiruvananthapuram, directed the Corporate Debtor to pay Rs.1,25,50,000/-, which was upheld by the Hon'ble High Court of Kerala in R.C. Rev. No. 248 of 2014 dated 1.10.2014. The Applicant remitted the amount to prevent imminent eviction. This payment, along with interest, formed a substantial part of the debt underlying the Section 7 application filed by the Applicant. Upon commencement of CIRP, the Applicant's claims exceeding Rs. 3.13 crore, submitted as both Financial and Operational Creditor, were admitted and reflected in the Information Memorandum. The Applicant thereafter submitted a compliant Resolution Plan (Plan A), disclosing a confirmed co-investor and proposing a higher plan value of Rs. 4,29,36,494/-, with assured capital infusion, employee retention, and operational expansion.
- v. And stated that Plan A proactively addressed the leasehold of the Corporate Debtor's premises owned by ABTT, providing for orderly relocation to alternative land owned by the Applicant if the lease was not



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renewed, ensuring uninterrupted operations. In contrast, Plan B, though ranked second, contained no binding provision for lease expiry or non-renewal and relied on a conditional assumption that ABTT would extend the lease, which is outside the control of the Resolution Applicant or the CoC. The qualitative evaluation acknowledged the lease as a material factor affecting plan viability. Plan B itself admitted that its financial stability and long-term viability depend on ABTT's future cooperation for a 10-year lease, creating a material risk and violating Section 30(2)(d) of IBC, 2016.

- vi. The Applicant consistently clarified before the CoC that Plan A was independent of any favourable decision by ABTT, whereas Plan B was entirely contingent upon renewal of the lease by ABTT, without any assurance or binding commitment. During CoC deliberations, Plan B was irregularly revised through an additional Rs.50 lakh offer that was never formally incorporated into the plan and was not considered for ranking as recorded in the 15th CoC minutes. Even with this addition, Plan B remained conditional, as payments to ABTT were subject to securing a fresh 10-year lease, despite ongoing disputes and litigation with the lessor. Out of the projected Rs.4.36 crore plan value, only Rs.11.6 lakhs were actually available for settlement, with the remaining amounts contingent upon uncertain future events, including lease renewal. Preferring such a speculative and conditional plan over Plan A, which provided an unconditional mechanism and relocation strategy, defeats the object and spirit of the IBC, 2016.
- vii. The proposed Plan B relied on a vague and non-binding assumption of an amicable settlement with the Lessor, which is speculative and legally



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unsustainable. It merely suggests a lump-sum payment and enhanced rent subject to negotiation, and if that fails, it depends on pending eviction proceedings or shifting to an unspecified alternate premises. This approach is arbitrary, especially since the Lessor, ABTT, has clearly objected by filing IA(IBC)/217/KOB/2024 seeking exclusion of its property from the CIRP. A Resolution Plan cannot be based on uncertain negotiations or pending litigation, and the CoC approved the plan without obtaining the Lessor's consent or assessing the impact of ongoing disputes.

- viii. The Plan B is entirely dependent on continued occupation of the existing premises without any binding or extended lease arrangement with the Attukal Bhagavathy Temple Trust. This exposes the Corporate Debtor to imminent eviction risk, making the plan speculative and unstable. Since continued occupation is within the exclusive control of ABTT, its examination as a witness is necessary.
- ix. In contrast, Plan A offered a concrete and executable revival strategy, including expansion into a medical college, specialised oncology and palliative care services, assured workforce retention, and relocation to the Applicant's own property within the same city, removing reliance on third-party leases. Despite this, the CoC arbitrarily disregarded Plan A and gave undue weight to Plan B, resulting in unequal treatment of the resolution applicants.
- x. Further added that Plan B's continuation at the existing premises depends entirely on ABTT's willingness to extend the lease, which is neither contractually secured nor guaranteed. Whether ABTT agrees to extend is a decisive issue affecting the feasibility and legality of the plan



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and cannot be presumed by the CoC or Applicant. The RFPR did not require an NOC from ABTT, making it necessary to verify their position. Summoning ABTT is therefore essential to establish that no lease extension has been agreed, undermining the assumptions underlying Plan B.

- xi. The Applicant stated that the proposed examination of ABTT will be strictly limited to issues arising from the Resolution Plan, including: the status of the lease, any assurances or commitments for extension, whether consent was sought before the RFPR, ongoing negotiations, and any agreement on post-expiry occupation. This is solely to assess the fairness of the CoC's decision within the CIRP. And added that the Applicant is filing a separate interlocutory application to implead Mr. M. Ayyappan, the Resolution Applicant, whose plan was approved by the CoC.
3. Respondent No. 1/CoC filed its reply on 19.01.2026 and made the following submissions:
- i. The Applicant, being an Unsuccessful Resolution Applicant, has already filed IA(IBC)/379/KOB/2025 challenging the commercial wisdom of the CoC, which approved Dr. M. Ayyappan's resolution plan with 100% voting share. Pleadings in that application are complete, arguments have been heard, and the matter is pending orders. At this late stage, the petitioner has filed the present application seeking to examine a third-party witness, which is alleged to be unlawful and intended solely to delay approval of the resolution plan.
 - ii. The proceedings under the IBC,2016, before this Adjudicating Authority are summary in nature and do not permit detailed trials or examination



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of evidence as in civil courts, as such processes would unnecessarily delay insolvency resolution. Additionally, the Applicant lacks *locus standi* to challenge the Resolution Plan approved by the CoC, and therefore, the present application is void and not maintainable in law.

- iii. The Respondent No. 1 stated that there is no provision empowering the RP, NCLT, or NCLAT to overturn CoC decisions. This application to summon a third-party witness regarding the lease is irrelevant and would amount to judicial review of the CoC's commercial decisions. The Resolution Plan was formulated considering the lease status and pending litigation, and the CoC approved it with full awareness of these factors. Since the plan is already pending approval before this Adjudicating Authority, there is no need to entertain a belated application by an Unsuccessful Resolution Applicant who is no longer part of the process.
- iv. The CoC has the primary authority to evaluate whether a Resolution Plan is commercially viable and operationally feasible for the Corporate Debtor. A Prospective Resolution Applicant does not have a vested right to have their plan approved. This was affirmed by the Hon'ble *Supreme Court in Arcelor Mittal India Pvt Ltd v. Satish Kumar Gupta*. The commercial wisdom of the CoC is paramount and cannot be interfered with by the Adjudicating Authority unless there is a material irregularity in approving the plan under the Insolvency and Bankruptcy Code, 2016. Assessing plans for feasibility and selecting the most suitable one is part of the CoC's commercial judgment and is not considered irregular.
- v. The CoC approved Dr. M. Ayyappan's Resolution Plan with 100% votes, and the objection against it is baseless. Under Section 31 of the IBC, 2016,



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the Adjudicating Authority can only examine if the plan complies with Section 30(2).

- vi. The Respondent No. 1 further stated that the Corporate Debtor runs a NABH-accredited multi-specialty hospital which was previously loss-making, but under the Resolution Professional, it became profitable, showing past management inefficiency (including the Applicant). The CoC found Dr. M. Ayyappan's plan more feasible, ensuring continuity, stability, and long-term growth, while also balancing public interest and stakeholders' needs.
 - vii. The Respondent No. 1 submitted that the lease with ABTT is governed by established tenancy laws, and its feasibility is not a valid ground to challenge the approved Resolution Plan. Existing lease-related litigations are being contested in appropriate courts, and the Adjudicating Authority cannot decide their outcomes or summon the Trust for this purpose.
4. Respondent No. 2 filed the reply stating the following:
- i. The Corporate Debtor operates in a building leased from ABTT and continues possession as a statutory tenant under the Kerala Buildings (Lease and Rent Control) Act, 1965, despite the lease expiry. After the public announcement, the Trust claimed rent arrears of Rs. 7,95,79,475/-, which the Resolution Professional accepted on 25.10.2024.
 - ii. Since 2016, the Corporate Debtor has been involved in multiple rent and eviction disputes with ABTT under the Kerala Buildings (Lease and Rent Control) Act, 1965. The Corporate Debtor has been paying Rs. 1,44,833/- monthly during the CIRP. Several cases, including RCP No. 15/2016 and



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RCP No. 42/2024, are pending, with stays granted by appellate authorities.

- iii. And stated that the Corporate Debtor continues in possession of the leased premises as a statutory tenant under the Kerala Buildings (Lease and Rent Control) Act, 1965, and can only be evicted through pending rent control proceedings. The Information Memorandum disclosed these proceedings, and the Prospective Resolution Applicant was aware that obtaining NOC or pursuing the lease depended on these legal rights. Summoning the ABTT to discuss the lease or consent is irrelevant, as the Adjudicating Authority is not the forum to decide ongoing rent disputes.

FINDINGS:

5. Heard the Learned Counsel for the parties and perused the available material on the records. The present application has been filed by the Unsuccessful Resolution Applicant in continuation of its challenge to the approval of Plan B by the CoC. It is not in dispute that the Corporate Debtor is functioning in premises leased from Attukal Bhagavathy Temple Trust/Lessor.
6. The Applicant contends that its own Resolution Plan, Plan A provided a definite and independent solution to the lease issue, including relocation to alternate premises if renewal was denied. In contrast, Plan B, as approved by the CoC, is alleged to be dependent on the future willingness of Attukal Bhagavathy Temple Trust/Lessor to grant a fresh lease. On this basis, the Applicant seeks examination of the Authorised Representative of the Lessor.



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7. At the outset, it is necessary to examine whether the Applicant, whose Resolution Plan was not approved by the CoC, can seek to expand the scope of the present proceedings by invoking Section 424 of the Companies Act, 2013 and Rule 52 of the NCLT Rules for summoning a third party.
8. The Hon'ble Supreme Court in **K. Sashidhar v. Indian Overseas Bank**, (2019) ibclaw.in 08 SC, has categorically held that the commercial wisdom of the CoC is non-justiciable. The Adjudicating Authority is not empowered to analyse or evaluate the commercial decision of the CoC, nor to enquire into the justness of such a decision. When dealing with a Resolution Plan, the jurisdiction of this Adjudicating Authority under Section 31 of the IBC, 2016 is limited to examining whether the Resolution Plan, as approved by the CoC, complies with the requirements set out under Section 30(2) and other applicable laws.
9. This principle has been recently confirmed by the Hon'ble Supreme Court in **Kalyani Transco v. Bhushan Power and Steel Ltd.** (2025) ibclaw.in 388 SC, wherein it was held that the legislature has consciously not provided any ground to challenge the commercial wisdom exercised by the CoC. The Hon'ble Supreme Court also emphasised that any interference with such commercial decision would amount to rewriting the provisions of IBC, 2016 and defeating its objective of timely resolution. It was clearly observed that a challenge cannot be entertained unless it falls strictly within the limited grounds contemplated under IBC, 2016.
10. The present application does not point to any specific non-compliance under Section 30(2) of the IBC, 2016. Instead, it seeks to summon the lessor of the Corporate Debtor to examine issues relating to lease continuation and the feasibility of the approved plan. In the present case, the Resolution Plan



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has not yet been approved by this Adjudicating Authority. At this stage, this Adjudicating Authority is required to examine whether the plan approved by the CoC meets the statutory requirements under Section 30(2) of IBC, 2016. The feasibility and viability of a plan, including business assumptions such as renewal of lease or negotiations with a lessor, fall within the commercial domain of the CoC. Whether the lease is likely to be renewed, whether eviction proceedings may succeed, and whether the Successful Resolution Applicant has taken such risks into account are all considerations that form part of the feasibility and viability analysis undertaken by the CoC.

11. The present Interlocutory Application has been filed seeking an order to summon the Authorised Representative of Attukal Bhagavathy Temple Trust for the purpose of enforcing cross-examination, invoking the provisions of Section 424 of the Companies Act, 2013, on the ground that this Tribunal has the powers of a civil court in respect of summoning and enforcing the attendance of any person and examining him on oath.
12. No doubt, only Court possesses such powers. However, the said power is discretionary and is to be exercised only when the Adjudicating Authority is satisfied that the evidence sought is essential for the effective and complete adjudication of the issues but importing such provision for adjudication of issues arising within the limited jurisdiction under the Insolvency and Bankruptcy Code, 2016, would delicate time bound objective of Code itself.
13. Admittedly, while exercising jurisdiction under the IBC, 2016, this Adjudicating Authority does not conduct a detailed trial nor permit a roving enquiry into collateral matters. The scope of judicial review in matters



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concerning the approval of a Resolution Plan is circumscribed by the statutory framework and does not extend to converting the proceedings into a full-fledged evidentiary trial.

14. In the present case, the applicant has filed the application without demonstrating how the personal examination of the Authorised Representative of the said Trust is indispensable for the adjudication of the issues arising in IA(IBC)/379/KOB/2025. The pleadings, documents, and other relevant material are already on record and are sufficient for determining the limited questions that fall for consideration before this Adjudicating Authority. Permitting the oral examination of a third party at this stage would unnecessarily expand the scope of the proceedings and delay the time-bound process envisaged under the IBC, 2016. Any observation made herein shall have no bearing on the merits of the case.
15. This Adjudicating Authority cannot permit an Unsuccessful Resolution Applicant to indirectly reopen the commercial evaluation of the CoC by turning these proceedings into an evidentiary inquiry. The power under Section 424 of the Companies Act, 2013, is procedural in nature and cannot be used to expand the scope of judicial review under the IBC.
16. This Adjudicating Authority is of the considered view that the Applicant, being an Unsuccessful Resolution Applicant, does not have the *locus standi* to maintain the present application seeking summoning and examination of a third-party witness for the purpose of questioning the feasibility of a CoC-approved Resolution Plan.
17. The present Application is nothing but an abuse of the process of law and, as such, merits dismissal with a cost of **Rs.10,000/- (Rupees Ten thousand only)**, to be deposited with the **National Defence Fund**. The



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Applicant is directed to deposit the cost within three days and file a compliance memo.

18. Accordingly, **IA(IBC)/2/KOB/2026** in IA(IBC)/379/KOB/2025 in CP(IB)/22/KOB/2024, stands **dismissed** with cost.
19. The Registry is directed to send e-mail copies of this order forthwith to all the parties and their counsel for information and for taking necessary steps.
20. Let the certified copy of this order be issued upon compliance with the requisite formalities.
21. File be consigned to records.

Sd/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 27th day of February, 2026.

*K**

JL/Steno