

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

**CP(IBC)/51/KOB/2023**

*(Under Section 94 of the IBC, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019)*

**In the matter of:**

Mr. Tenny Jose.

**Memo of Parties:**

Mr. Tenny Jose, residing at Flat No. 3231, 23<sup>rd</sup> Floor, Topaz Sobha City, Thrissur, 680 020.

**... Petitioner/Personal Guarantor.**

**Order delivered on: 22.12.2023**

***Coram:***

**Hon'ble Member (Technical)**

**Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**TMT. Justice (Retd.) T. Krishna Valli**

***Appearances:***

For the Petitioner/Personal Guarantor: Ms. Dharmya M S, Adv.

**ORDER**

**Per: Shyam Babu Gautam Member (Technical)**

1. Under consideration is Petition No. CP(IBC)/51/KOB/2023 filed under Section 95 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The relief sought is to initiate a Corporate Insolvency Resolution Process (hereinafter referred to as the CIR Process") against the Personal Guarantor of M/s. Tenny Jose Limited (Corporate Debtor) for the default amount of Rs. 73,77,18,785.56/- (Rupees Seventy-Three Crore Seventy-Seven Lakh Eighteen Thousand Seven Hundred Eighty-Five Rupees and Fifty-Six Paise Only) in respect of credit facility availed from the various Banks.
2. The facts as narrated in the application and explained by the Petitioner/ Personal Guarantor are summarized hereunder:
  - i. The Petitioner/Personal Guarantor promoted M/ s Tenny Jose Limited ("Corporate Debtor") a family-owned, closely held, public, unlisted company incorporated under the Companies Act, 1956, on 11.10.2011. The Corporate Debtor was engaged in the business of paper products, building materials, roofing

- structures, and steel products. The Corporate Debtor is also a small and medium enterprise as per the provisions of the Micro, Small and Medium Enterprises Development Act, 2006.
- ii. During the course of its business, Corporate Debtor availed working capital credit facilities from the State Bank of India (“SBI”) and South Indian Bank (“SIB”), which were revised/reviewed/renewed from time to time by the said financial institutions on a yearly basis. The Petitioner/ Personal Guarantor along with his father, wife, and two sons had given Personal Guarantees to SIB and SBI and mortgaged all of the assets belonging to them. Further, a Corporate Guarantee was given by M/s Steel House Private Limited, a company incorporated under Indian Companies Act which was promoted by the Petitioner.
- iii. It is stated that the financial struggles of the Corporate Debtor and the Petitioner started in November 2018, when the Government of India imposed anti-dumping duty to import copier paper from the ASEAN countries. During the period just before that, Corporate Debtor had ventured into a pan India super stockiest arrangement with its principal supplier Asia Pulp and Paper-Indonesia, based on the past 2 years of growth in sales in the South Indian market and also considering the demand for imported copiers in the other regions of India. Based on this new arrangement, the Corporate Debtor had already committed capital and overhead expenses of a long-term and short-term nature. The unexpected imposition of an anti-

dumping duty structure not only prevented the growth plan of Corporate Debtor but also restricted the current import level. The paper industry had to take a big blow during the Covid- 19 pandemic period as the demand for the paper had fallen below 50% owing to the closure of offices and educational institutions, which are the driving forces of demand. This scenario caused the complete halt of the import business of Corporate Debtor, causing unexpected detention and demurrage charges at the port and severe gross loss in the sale of goods in the hold, transit and warehouse. This has impacted in pushing down Corporate Debtor into a deep financial crisis.

- iv. The loan accounts of the Corporate Debtor were declared as NPA by SBI on 28.06.2021 and by SIB on 23.02.2021.
- v. It is further stated that one of the operational creditors of the Corporate Debtor, M/s Korea Trade Insurance Corporation, initiated a proceeding under section 9 of the Insolvency and Bankruptcy Code 2016 ("Code") for the commencement of Corporate Insolvency Resolution Process ("CIRP") of Corporate Debtor before this Tribunal. This Tribunal vide order dated 21.12.2021 admitted Corporate Debtor into CIRP and subsequently the Corporate Debtor was liquidated by this Tribunal vide order dated 16.12.2022.
- vi. It is further stated that the Petitioner/ Personal Guarantor is aggrieved by the recovery actions initiated by SBI and SIB wherein the reserve price fixed by these banks for the sale of the securities mortgaged by the Petitioner are way lesser than that

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was offered as part of P G Settlement under the resolution plan submitted by the Petitioner/Personal Guarantor. Further, both banks had rejected One Time Settlement (OTS) proposals made by the Petitioner on multiple occasions. The Petitioner/Personal Guarantor has no other way but to invoke the provisions of the Code to map in a repayment plan to get back on his feet and contribute to the economy.

**FINDINGS: -**

3. We have heard the learned counsel for the Petitioner/ Personal Guarantor. The Petition for initiating the Insolvency Resolution Process against the Personal Guarantor of the Corporate Debtor is complete in all respects. Therefore, this Bench is of the opinion that Resolution Professional is to be appointed in this case. Hence, this Tribunal ordered as under: -
  - i. The aforesaid application filed under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6(1) of the Insolvency and Bankruptcy Rules, 2019 by Personal Guarantor of the Corporate Debtor **M/s. Tenny Jose Limited is allowed** with the following directions: -
  - ii. The interim moratorium under Section 96(1) (a) of the Insolvency and Bankruptcy Code, 2016 has commenced on the date of filing of these applications by the Creditor concerning all the debts and will cease to affect the date of admission
  - iii. During the such interim-moratorium period-

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- a) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
- b) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
- iv. This Adjudicating Authority hereby appoints **Mr. C J Davis** having **Registration Number: IBBI/IPA-003/ICAI-N-00343/2021-2022/13660** office at **House No 23/1223, Chandy House, Golden Gate, Rareeram Road, Anchangady, East Fort, Behind Selex Mall, Thrissur, Kerala- 680 005** as the Resolution Professional, to carry out functions as mentioned under the Insolvency and Bankruptcy Code, 2016. He has produced Form B, authorization for Assignment and also Form A, written consent to act as RP. The fee payable to the Resolution Professional (RP) shall be in accordance with the Insolvency and Bankruptcy Board of India (IBBI) Regulations/ Circulars/ Directions issued in this regard.
- v. That this Bench also directs that an advance payment of **Rs.2,00,000 (Rupees Two Lakhs only)** be paid by the Applicant/Creditor to the Resolution Professional (RP) immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).
- vi. The Resolution Professional, shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. He is directed to make the

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recommendations with reasons in writing for acceptance or rejection of this Application within ten days from the date of receipt of this order, as envisaged under the provisions of Section 99 of the Code. The Resolution Professional shall provide a copy of the report under Sub-Section 7 of Section 99 to the Creditor as soon as the same is filed before this Adjudicating Authority.

- vii. The Registry is directed to immediately communicate this order to the Creditor, Personal Guarantors, Corporate Debtor and the Resolution Professional by way of email. The Registry shall place a compliance report of this direction in this file.
- viii. List the above Company Petition for further proceedings on 09.01.2024.

**SHYAM BABU GAUTAM**  
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SHYAM BABU GAUTAM  
Date: 2023.12.22  
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**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

**T.KRISHNAVALLI**  
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**T KRISHNA VALLI**  
**(MEMBER JUDICIAL)**

Signed on this the 22<sup>nd</sup> day of December, 2023.

Rajasree R. Nair/LRA