

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

IBA/42/KOB/2020

and

IBA/43/KOB/2020

and

IBA/44/KOB/2020

and

IBA/45/KOB/2020

and

IA(IBC)49 (KOB/2021) in IBA/42/KOB/2020

**(Under Section 95 Of Insolvency and Bankruptcy Code,
2016 read with Rule 7(2) Of Insolvency and Bankruptcy
(Application to Adjudicating Authority for Insolvency
Resolution Process for Personal Guarantors to Corporate
Debtors) Rules, 2019)**

Order delivered on: 6th October, 2021

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Hon'ble Mr. Rajesh Sharma, Member (Technical)

In the matter of

IBA/42/KOB/2020

State Bank of India
Stressed Asset Resolution Branch (SARB),
Ernakulam, 7th Floor, Vankarath Tower
Palarivattom , Bypass Junction
Ernakulam-682024

: Applicant/Creditor

Versus

Sahadulla M.I
69, Rastanura

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RPD Mark
KuravanKonam
Kowdiar
Thiruvanathapuram

: Respondent

IBA/43/KOB/2020

State Bank of India
Stressed Asset Resolution Branch (SARB),
Ernakulam, 7th Floor, Vankarath Tower
Palarivattom , Bypass Junction
Ernakulam-682024

: Applicant/Creditor

Versus

Zaheer E.N
TC-4/1240
Padiyath House, 66, RPD Marg
Kuravankonam,
Kowdiar (PO), Trivandrum-695003

: Respondent

IBA/44/KOB/2020

State Bank of India
Stressed Asset Resoluion Branch (SARB),
Ernakulam, 7th Floor, Vankarath Tower
Palarivattom , Bypass Junction
Ernakulam-682024

: Applicant/Creditor

Versus

E.Iqbal
Mullaserry House,
Sasthamvattom
Perunkuzhi, Trivandrum-690305

: Respondent

IBA/45/KOB/2020

State Bank of India
Stressed Asset Resoluion Branch (SARB),
Ernakulam, 7th Floor, Vankarath Tower
Palarivattom , Bypass Junction
Ernakulam-682024

: Applicant /creditor

Versus

E.M Najeeb
6D, Kowdiar Manor,
Jawahar Nagar
Thiruvananthapuram-695041

: Respondent

Parties/Counsel present (through video conference)

For Applicant : Shri Vinod P.V, Advocate

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For Respondents : Shri. Sivasankar G, Advocate (IBA/42/KOB/2020)
: Shri. Mohan Pulikkal through proxy
Shri. M. A Shaji, Advocate (IBA/43/KOB/2020,
IBA/44/KOB/2020, IBA/45/KOB/2020)

Per: Rajesh Sharma, Member (T)

Since common issues and laws are involved in all the four applications, they have been taken up together and a common order is passed in these cases.

IBA/42/KOB/2020

1. This Application has been filed by the Applicant (Creditor) the State Bank of India under Section 95 (1) of the Insolvency and Bankruptcy Code, 2016 (I&B Code, 2016) read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (Personal Guarantors Insolvency Rules) against Mr. Sahadulla M. I, Personal Guarantor of the Corporate Debtor M/s. Green Gateway Leisure Private Limited, for initiating Insolvency Resolution Process.
2. The brief facts leading to the present application is stated as under: -

The Corporate Debtor Company M/s. Green Gateway Leisure Private Limited was admitted under Corporate Insolvency Resolution Process by this Tribunal vide Order dated 15.10.2020, pursuant to an application filed under Section 7 of the I&B Code, 2016 by the Union Bank of India. The Corporate Debtor was incorporated

for the purpose of development of a hotel at Bekal, Kasaragod. The land comprising of 55.43 acres was acquired by Bekal Resorts Development Corporation Limited (BRDC), a Kerala Government undertaking and leased in favour of the Corporate Debtor. The licence for development of the land was originally granted by BRDC in favour of M/s. AIR Travel Enterprises India Ltd (Air Travel), parent company of the Corporate Debtor, which was then holding more than 51% shareholding in the Corporate Debtor. Since, the Corporate Debtor was incorporated for implementation of the resort project and after its incorporation, BRDC transferred the licence in favour of the Corporate Debtor on 16.10.2010.

3. In the application it is further stated that for the implementation of the project the Corporate Debtor has availed credit facilities from the Applicant Bank. Applicant has sanctioned a credit facility of Rupees 67,64,050 on 14.01.2010 and based on acceptance of the conditions of the said sanction by the Corporate Debtor and guarantors including respondent herein, the applicant entered into a Term Loan Agreement with the Corporate Debtor. As a security towards the said facility respondent executed a deed of guarantee for overall limit in favour of SBI on 14.01.2010.

4. It is also stated that based on further request from the Corporate Debtor, the applicant agreed to revalidate the term loan by increasing the limit by further Rupees 20 Crores on 24.02.2010

on the condition that Corporate Debtor shall give paripassu first charge on the fixed assets and directors including the respondent herein shall execute personal guarantees. The additional facilities were granted considering the net worth Rupees 26 Crores of the guarantors. Followed by the sanction, a supplemental agreement for loan increasing the Term Loan from Rs. 67,64,050 to Rs. 20,67,64,050/- was entered on 27.03.2010 and respondent herein jointly with other director Mr. E.M Najeeb has executed a supplementary deed of guarantee for modifying the guarantee from Rs.67,64,050 to Rs. 20,67,64,050/- in favour of Applicant.

5. It is also stated that the applicant sanctioned a credit facility of Rupees 20 Crores to the Corporate Debtor on 20.05.2010 which also includes the personal guarantee of the respondent herein among other securities including paripassu first charge in the fixed assets and guarantee of other directors. Pursuant to the acceptance of the said sanction letter by the Corporate Debtor and directors, the applicant (formerly SBT) has entered into a term loan agreement with the Corporate Debtor on 09.06.2010. The respondent herein has executed Deed of Guarantee in favour of SBT on 09.06.2010 agreeing to guarantee the repayment of the said credit facilities. The SBT further sanctioned a term loan of Rupees.8 Crores on 09.02.2015. For this also the Corporate Debtor has executed a separate Term Loan agreement on 20.02.2015 and he

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has executed a deed of guarantee in favour of SBT towards the said additional facility of Rupees 8 Crores.

6. Corporate Debtor and the guarantors including Respondent herein have jointly executed a revival letter on 16.03.2013 and 10.03.2016 in favour of the applicant acknowledging the execution of all loan documents and guarantee agreements for the overall limit of Rs. 20,67,64,050. Similarly, the revival letters were also executed in favour of SBT on 30.03.2013 and 04.02.2016. In view of the default committed by the Corporate Debtor in the repayment of credit facilities, the accounts of the Corporate Debtor were declared as NPA on 28.06.2017, 29.06.2017 and on 24.07.2017. Applicant has issued notice to the Corporate Debtor and Guarantors for repayment/regularization of the account. However, the Corporate Debtor requested for additional facilities for completing the project and regularizing the account, to which the Creditor expressed their inability to grant additional facilities. Since, the Corporate Debtor failed to repay the debt, the Applicant jointly with other banks have issued notice under Section 13(2) of the SARFAESI Act on 29.12.2017 to the Corporate Debtor to repay the due of applicant Rs. 53,01,79,190/- within 60 days. The Corporate Debtor has also issued notice under Section 13(2) of the SARFAESI Act to the respondent by invoking the personal guarantees. The Creditor has also taken possession of the secured asset on 15.05.2018. The Creditor jointly with other lenders have also filed application bearing No. OA.417 of 2018

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on 24.07.2018 before the Debts Recovery Tribunal for recovery of the due against the Corporate Debtor and the Personal Guarantors including the respondent herein, which is pending consideration. On 30.09.2019, based on the request of the Corporate Debtor, the Creditor granted an OTS Scheme for Rs. 38,14,49,303/-. However, the Corporate Debtor failed to comply with the OTS Scheme and hence OTS sanction was rendered infructuous. The outstanding dues of the Corporate Debtor as on 15.10.2020 is Rupees 72,63,09,421. Since respondent is unable to pay the debt of **Rupees 72,63,09,421/-**, the Applicant has filed this application for initiation of Insolvency Resolution Process against the Guarantor under the I&B Code,2016. The applicant has issued demand notice to the Respondent on 17.11.2020 under Rule 7(1) of the Personal Guarantors Insolvency Rules, 2019. The demand notice was delivered to him on 21.11.2020. The Respondent has replied to the said notice vide letter dated 30.11.2010, refusing to make any payment towards the debt stating the reason that he has not executed any loan documents and deed of guarantees and all his signatures in all the documents were forged one. However, the contention of the Applicant/creditor is that the respondent availed the credit facilities from SBI, SBT, Union Bank of India and Dhanlaxmi Bank being the director of the Corporate Debtor and the respondent's submission that the documents are forged cannot be accepted.

7. The Applicant has invoked the personal guarantee of the respondent on 29.12.2017. Respondent as a personal guarantor to the Corporate Debtor failed to repay the debt amount of **Rupees 72, 63, 09, 421/-**, within 14 days from 17.11.2020, i.e., the date of the demand notice issued under Section 95(4) {b) of IBC as he has failed to pay unpaid debt in default.
8. The Learned Counsel for the Respondent has made his submissions basically on the periphery of maintainability of this application, stating that the respondent has not executed any loan documents and deed of guarantees and all his signatures in the documents were forged.
9. In this matter, the Respondent has filed an **IA(IBC)49 (KOB)/2021** to which the applicant filed a counter. We have gone through the pleadings of both sides and found that there is no merit in the contention of the respondent that his signatures were forged. Moreover, the respondent has till date not filed any case before the appropriate authority with regard to forgery of his signature by somebody. Hence, this IA is to be dismissed.

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10. This Petition has been filed by the Applicant(creditor) **the State Bank of India** under **Section 95 (1) of the Insolvency and Bankruptcy Code, 2016** (I&B Code, 2016) read with **Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to**

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Corporate Debtors) Rules, 2019 (Personal Guarantors Insolvency Rules) against **Mr. Zaheer E.N**, Personal Guarantor of the Corporate Debtor **M/s. Green Gateway Leisure Private Limited**, for initiating Insolvency Resolution Process.

11. The brief facts leading to the present application is stated as under: -

The Corporate Debtor Company M/s. Green Gateway Leisure Private Limited was admitted under Corporate Insolvency Resolution Process by this Tribunal vide Order dated 15.10.2020, pursuant to an application filed under Section 7 of the I&B Code, 2016 by the Union Bank of India. The Corporate Debtor was incorporated for the purpose of development of a hotel at Bekal, Kasaragod. The land comprising of 55.43 acres was acquired by Bekal Resorts Development Corporation Limited (BRDC), a Kerala Government undertaking and leased in favour of the Corporate Debtor. The licence for development of the land was originally granted by BRDC in favour of M/s. AIR Travel Enterprises India Ltd (Air Travel, parent company of the Corporate Debtor, which was then holding more than 51% shareholding in the Corporate Debtor. Since, the Corporate Debtor was incorporated for implementation of the resort project and after its incorporation, BRDC transferred the licence in favour of the Corporate Debtor on 16.10.2010.

12. In the application it is further stated that for the implementation of the project, the Corporate Debtor has availed

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credit facilities from the Applicant Bank. Applicant on 14.01.2010 sanctioned a credit facility of Rupees 67,64,050/- and also sanctioned a term loan of 20 Crores on 24.02.2010. Again, the applicant (formerly State Bank of Travancore) sanctioned Term Loan of Rupees 20 Crores on 20.05.2010 and Rupees 8 Crores on 09.02.2015 amounting to total of Rupees 48,67,64,050/-.

13. It is also stated that the Corporate Debtor stood as a guarantor to the term loan of Rupees 20,67,64,050/- under loan Account No. 33438972824. It is further stated that based on further request from the Corporate Debtor, the SBI has agreed to revalidate the term loan by increasing the limit by further Rupees 20 Crores based on the condition that Corporate Debtor shall give paripassu first charge on the fixed assets and directors including the respondent shall execute personal guarantees. It is also stated that additional facilities were granted considering the net worth of the guarantors. SBI sanctioned additional Term Loan of Rupees 20 Crores on 24.02.2010, which was accepted by the Corporate Debtor. Followed by the sanction, a supplemental agreement for loan increasing the term loan from Rupees 67,64,050 to Rupees 20,67,64,050 was entered on 27.03.2010.

14. The Corporate Debtor and the guarantors including respondent herein have jointly executed a revival letter on 16.03.2013 and 10.03.2016 in favour of the applicant acknowledging the execution of all loan documents and guarantee agreements for the overall

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limit of Rupees 20,67,64,050. Similarly, the revival letter was also executed in favour of SBT on 03.03.2013 and 04.02.2016.

15. The conditions for granting the said credit facility also include the personal guarantee of the respondent among other securities including paripassu first charge in the fixed assets and guarantee of other directors. Pursuant to the acceptance of the said sanction letter by the Corporate Debtor and directors, the SBT entered into Term Loan agreement with the Corporate Debtor on 09.06.2010. The respondent herein has executed Deed of Guarantee in favour of SBT on 09.06.2010 agreeing to guarantee the repayment of the said credit facilities.

16. In view of the default committed by the Corporate Debtor in the repayment of credit facilities, the accounts of the Corporate Debtor were declared as NPA on 28.06.2017, 29.06.2017 and on 24.07.2017. Applicant has issued notice to the Corporate Guarantors for repayment/regularization of the account. However, the Corporate Debtor requested for additional facilities for completing the project and regularizing the account, to which the Creditor expressed their inability to grant additional facilities. Since, the Corporate Debtor failed to repay the debt, the Applicant jointly with other banks have issued notice under Section 13(2) of the SARFAESI Act on 29.12.2017 to the Corporate Debtor to repay the due of applicant Rs.53,01,79,190/- within 60 days. The Corporate Debtor has also issued notice under Section 13(2) of the SARFAESI Act to the respondent by invoking the

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personal guarantees to repay the outstanding due of Rupees 22,62,47,369. The Creditor took possession of the secured asset on 15.05.2018. The Creditor jointly with other lenders have also filed application bearing No. OA 417 of 2018 on 24.07.2018 before the Debts Recovery Tribunal for recovery of the due against the Corporate Debtor and the Personal Guarantors including the respondent herein, which is pending consideration. On 30.09.2019, based on the request of the Corporate Debtor, the Creditor granted an OTS Scheme for Rs.38,14,49,303/-. However, the Corporate Debtor failed to comply with the OTS Scheme and hence, OTS sanction was rendered infructuous. The outstanding dues of the Corporate Debtor as on 15.10.2020 is Rupees 29,29,13,321. Since respondent is unable to pay the debt of **Rupees 29,29,13,321**, the Applicant has decided to file this application for initiation of Insolvency Resolution Process against the Guarantor under the I&B Code,2016. The applicant has issued demand notice to the Respondent on 17.11.2020 under Rule 7(1) of the Personal Guarantors Insolvency Rules, 2019. The demand notice was delivered on him on 21.11.2020. The Respondent has replied to the said notice vide letter dated 30.11.2010, refusing to make any payment towards the debt with reasons that Corporate Debtor on 21.05.2020 requested for restructuring of the term loan considering the factual situations. The term loan agreements were varied resulting in novation of the contract, which were not in the knowledge of the respondent. They have further stated that

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the Applicant cannot invoke the jurisdiction of this Tribunal under I&B Code, 2016 without exhausting the remedy under the DRT and SARFAESI Proceedings.

17. The Applicant has invoked the personal guarantee of the respondent on 29.12.2017. Respondent as a personal guarantor to the Corporate Debtor failed to repay the debt amount of **Rupees 29,29,13,321/-** within 14 days from 17.11.2020, i.e., the date of the demand notice issued under Section 95(4) (b) of IBC as he has failed to pay unpaid debt in default.

18. The Learned Counsel for the Respondent has made his submissions basically on the periphery of maintainability of this application, as held by the Supreme Court in Gaurav Hargovindhbhai Dave V. Asset Reconstruction Company (India) Limited Another [(2019) 10 SCC 572], where the date of default was stated in the Application to be the date of NPA, limitation will run from the date of NPA. In the present application the date of default is on 24.07.2017 therefore such application ought to have been filed on or before 23.07.2020. The present Application filed on 11.12.2020 is therefore time barred. It is further stated that the CIRP cannot be initiated against more than one guarantor simultaneously for the same set of debt and default as held by Hon' ble NCLAT in its order dated 08.01.2019 in Company Appeals (AT) (Insolvency) No. 346 and 347 of 2018 in the matter of Dr. Vishnu Kumar Agarwal V. M/s. Piramal Enterprises Limited.

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19. This Petition has been filed by the Applicant(creditor) **the State Bank of India** under **Section 95 (1) of the Insolvency and Bankruptcy Code, 2016** (I&B Code,2016) read with **Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019** (Personal Guarantors Insolvency Rules) against **Mr. E. Iqbal**, Personal Guarantor of the Corporate Debtor **M/s. Green Gateway Leisure Private Limited**, for initiating Insolvency Resolution Process.

20. The brief facts leading to the present application is briefly stated as under: -

The Corporate Debtor Company M/s. Green Gateway Leisure Private Limited was admitted under Corporate Insolvency Resolution Process by this Tribunal vide Order dated 15.10.2020, pursuant to an application filed under Section 7 of the I&B Code,2016 by the Union Bank of India. The Corporate Debtor was incorporated for the purpose of development of a hotel at Bekal, Kasaragod. The land comprising of 55.43 acres was acquired by Bekal Resorts Development Corporation Limited (BRDC), a Kerala Government undertaking and leased in favour of the Corporate Debtor. The licence for development of the land was originally granted by BRDC in favour of M/s. AIR Travel Enterprises India Ltd (Air Travel), parent company of the Corporate Debtor, which was then holding more than 51% shareholding in the Corporate Debtor.

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Since, the Corporate Debtor was incorporated for implementation of the resort project and after its incorporation, BRDC transferred the licence in favour of the Corporate Debtor on 16.10.2010.

21. In the application it is further stated that for the implementation of the project the Corporate Debtor has availed credit facilities from the Applicant Bank. Applicant on 14.01.2010 sanctioned a credit facility of Rupees 67,64,050 and also a term loan of Rupees 20 crores was sanctioned on 24.02.2010. Again, the State Bank of Travancore sanctioned Term loan of Rupees 20 crores on 20.05.2010 and Rupees 8 crores on 09.02.2015 amounting to total of Rupees 48,67,64,050/-.

22. It is also stated that the Corporate Debtor stood as a guarantor to the term loan of Rupees 20,67,64,050/- under loan Account No. 33438972824. It is further stated that based on further request from the Corporate Debtor, the applicant agreed to revalidate the term loan by increasing the limit by further Rupees 20 Crores on 24.02.2010 on the condition that Corporate Debtor shall give paripassu first charge on the fixed assets and directors including the respondent herein shall execute personal guarantees. It is also stated that additional facilities were granted considering the net worth of the guarantors. SBI sanctioned additional Term Loan of Rupees 20 crores on 24.02.2010, which was accepted by the Corporate Debtor. Followed by the sanction, a supplemental agreement for loan increasing the

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term loan from Rupees 67,64,050 to Rupees 20,67,64,050 was entered on 27.03.2010.

23. The Corporate Debtor and the guarantors including respondent herein have jointly executed a revival letter on 16.03.2013 and 10.03.2016 in favour of the applicant acknowledging the execution of all loan documents and guarantee agreements for the overall limit of Rupees 20,67,64,050. Similarly, the revival letter was also executed in favour of SBT on 03.03.2013 and 04.02.2016.

24. It is further stated that in view of the default committed by the Corporate Debtor in the repayment of credit facilities, the accounts of the Corporate Debtor were declared as NPA on 28.06.2017, 29.06.2017 and on 24.07.2017. Applicant issued notice to the parties to regularise the account. Instead of regularising the account, they sought for an additional credit facility to complete the project. Since the Corporate Debtor failed to repay the debt, the Applicant jointly with other banks have issued notice under Section 13(2) of the SARFAESI Act on 29.12.2017 to the Corporate Debtor to repay the due of applicant Rs. 53,01,79,190/- within 60 days. The Corporate Debtor has also issued notice under Section 13(2) of the SARFAESI Act to the respondent invoking the personal guarantees to repay the outstanding due of Rupees. 22,62,47,369/- under Account No.33438912824 in which he stood as guarantor to the term loan facilities. The Creditor took possession of the secured asset on 15.05.2018. Similarly, the Applicant jointly with other lenders

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have also filed application bearing No. OA 417 of 2018 on 24.07.2018 before the Debts Recovery Tribunal for recovery of the due against the Corporate Debtor and the Personal Guarantors including the respondent herein, which is pending consideration. On 30.09.2019, based on the request of the Corporate Debtor, the Creditor granted an OTS scheme for Rs.38,14,49,303/-. However, the Corporate Debtor failed to comply with the OTS scheme and hence OTS sanction was rendered infructuous.

25. It is further stated that since respondent is unable to pay the debt of Rs.29,29,13,321, the Applicant has filed this application for initiation of Insolvency Resolution Process against the Guarantor under the Insolvency and Bankruptcy Code,2016. Accordingly, as a pre-condition for filing the application, applicant has issued demand notice to the respondent on 17.11.2020 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency and Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. The demand notice was delivered on 21.11.2020. The Respondent has replied to the said notice vide letter dated 30.11.2010, refusing to make any payment against the debt. The respondent has stated that Corporate Debtor has on 21.05.2020 requested for restructuring of the term loan considering the factual situations. Respondent made allegations that the conditions of the term loan agreements were varied resulting in novation of the contract, which were not in the knowledge of the

respondent. It is further stated that Applicant cannot invoke the jurisdiction of this tribunal under I&B Code, 2016 without exhausting the remedy under the DRT and SARFAESI Proceedings.

26. The Applicant has invoked the personal guarantee of the respondent on 29.12.2017. Respondent as a personal guarantor to the Corporate Debtor failed to repay the debt amount of Rupees **29,29,13,321/-** within 14 days from 17.11.2020, i.e., the date of the demand notice issued under Section 95(4) (b) of IBC as he has failed to pay unpaid debt in default.

27. The Learned Counsel for the Respondent has made his submissions basically on the periphery of maintainability of this application, as held by the Supreme Court in *Gaurav Hargovindhbhai Dave V. Asset Reconstruction Company (India) Limited Another* [(2019) 10 SCC 572], where the date of default was stated in the Application to be the date of NPA, limitation will run from the date of NPA. In the present application the date of default is on 24.07.2017, therefore such application ought to have been filed on or before 23.07.2020. The present Application filed on 11.12.2020 is therefore time barred. It is further stated that the CIRP cannot be initiated against more than one guarantor simultaneously for the same set of debt and default as held by Hon'ble NCLAT in its order dated 08.01.2019 in Company Appeals (AT) (Insolvency) No. 346 and 347 of 2018 in the matter of *Dr. Vishnu Kumar Agarwal V. M/s. Piramal Enterprises Limited*.

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28. This Petition has been filed by the Applicant (creditor) **the State Bank of India** under **Section 95 (1) of the Insolvency and Bankruptcy Code, 2016** (I&B Code, 2016) read with **Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019** (Personal Guarantors Insolvency Rules) against **Mr. E.M. Najeeb**, Personal Guarantor of the Corporate Debtor **M/s. Green Gateway Leisure Private Limited**, for initiating Insolvency Resolution Process.

29. The brief facts leading to the present application is stated as under: -

The Corporate Debtor Company M/s. Green Gateway Leisure Private Limited was admitted under Corporate Insolvency Resolution Process by this Tribunal vide Order dated 15.10.2020, pursuant to an application filed under Section 7 of the I&B Code, 2016 by the Union Bank of India. The Corporate Debtor was incorporated for the purpose of development of a hotel at Bekal, Kasaragod. The land comprising of 55.43 acres was acquired by Bekal Resorts Development Corporation Limited (BRDC), a Kerala Government undertaking and leased in favour of the Corporate Debtor. The licence for development of the land was originally granted by BRDC in favour of M/s. AIR Travel Enterprises India Ltd (Air Travel), parent company of the Corporate Debtor, which was then holding more than 51% shareholding in the Corporate Debtor.

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Since, the Corporate Debtor was incorporated for implementation of the resort project and after its incorporation, BRDC transferred the licence in favour of the Corporate Debtor on 16.10.2010.

30. In the application it is further stated that for the implementation of the project the Corporate Debtor has availed credit facilities from the Applicant Bank. Applicant on 14.01.2010 sanctioned a credit facility of Rupees 67,64,050 and also a term loan of Rupees 20 crores was sanctioned on 24.02.2010. Again, the State Bank of Travancore sanctioned Term loan of Rupees 20 crores on 20.05.2010 and Rupees 8 crores on 09.02.2015 amounting to total of Rupees 48,67,64,050/-.

31. It is also stated that the Corporate Debtor stood as a guarantor to the term loan on the condition that Corporate Debtor shall give paripassu first charge on the fixed assets and directors including the Respondent herein shall execute personal guarantees. Thus, the Applicant has agreed to revalidate the term loan by increasing the limit by further Rupees 20 Crores. It is also stated that additional facilities were granted including considering the net worth of the guarantors. The Applicant sanctioned additional term loan of Rupees 20 crores on 24.02.2010, which was accepted by the Corporate Debtor. Followed by the sanction, a supplemental agreement for loan increasing the term loan from Rupees 67,64,050 to Rupees 20,67,64,050 was entered on 27.03.2010. The Respondent and other Director Mr.

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Shahadulla M.I executed a supplementary deed of guarantee for modifying the guarantee from Rupees 67,64,050 to Rupees 20,67,64,050 in favour of the Applicant.

32. It is further stated that applicant (formerly SBT) sanctioned a credit facility of Rupees 20 Crores to the Corporate Debtor on 20.05.2010 and SBT has entered into a term loan agreement with the Corporate Debtor on 09.06.2010. The Corporate Debtor and Directors have executed a Term Loan agreement for the said loan facilities on 09.06.2010. The Respondent has executed Deed of Guarantee in favour of SBT on 09.06.2010 agreeing to guarantee the repayment of the said credit facilities.

33. The outstanding dues of the Corporate Debtor as on 15.10.2020 is stated to be as under: -

Account No.	Facility	Limit	Total dues as on 15.10.2020 (Rupees)
33438912824	Term Loan	20.67	29,29,13,321
67114165809	Term Loan	20.00	31,48,12,311
67319127555	Term Loan	08.00	11,85,83,789
	Total	48.00	72,63,09,421

34. The Corporate Debtor and the guarantors including respondent have jointly executed revival letters on 16.03.2013 and 10.03.2016 in favour of the Applicant acknowledging the execution of all loan documents and guarantee agreements for the overall

limit of Rupees 20,67,64,050. Similarly, the revival letter was also executed in favour of SBT on 03.03.2013 and 04.02.2016.

35. It is further stated that in view of the default committed by the Corporate Debtor in the repayment of credit facilities, the accounts of the Corporate Debtor were declared as NPA on 28.06.2017, 29.06.2017 and on 24.07.2017. Applicant issued notice to the parties to regularise the account. Instead of regularising the account, they sought for an additional credit facility to complete the project. Since the Corporate Debtor failed to repay the debt, the Applicant jointly with other banks have issued notice under Section 13(2) of the SARFAESI Act on 29.12.2017 to the Corporate Debtor to repay the due of applicant Rs.53,01,79,190/- within 60 days. The Corporate Debtor has also issued notice under Section 13(2) of the SARFAESI Act to the respondent by invoking the personal guarantees to repay the outstanding dues. The Creditor took possession of the secured asset on 15.05.2018. Similarly, the Applicant jointly with other lenders have also filed application bearing No. OA 417 of 2018 on 24.07.2018 before the Debts Recovery Tribunal for recovery of the due against the Corporate Debtor and the Personal Guarantors including the respondent herein, which is pending consideration. On 30.09.2019, based on the request of the Corporate Debtor, the Creditor granted an OTS scheme for Rs.38,14,49,303/-. However, the Corporate Debtor failed to comply with the OTS scheme and hence OTS sanction was rendered infructuous.

36. It is further stated that since respondent is unable to pay the debt of Rs.72,63,09,421/-, the Applicant has filed this application for initiation of Insolvency Resolution Process against the Guarantor under the Insolvency and Bankruptcy Code. Accordingly, as a pre-condition for filing the application, applicant has issued demand notice to the respondent on 17.11.2020 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency and Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. The demand notice was delivered on 24.11.2020. The Respondent has replied to the said notice vide letter dated 30.11.2010, refusing to make any payment against the debt. The respondent/guarantor has stated that Corporate Debtor has on 21.05.2020 requested for restructuring of the term loan considering the factual situations. Respondent made allegations that the conditions of the term loan agreements were varied resulting in novation of the contract, which were not in the knowledge of the respondent. It is further stated that Applicant cannot invoke the jurisdiction of this Tribunal under I&B Code,2016 without exhausting the remedy under the DRT and SARFAESI Proceedings.

37. The Applicant has invoked the personal guarantee of the respondent on 29.12.2017. Respondent as a personal guarantor to the Corporate Debtor failed to repay the debt of Rupees 72,63,09,421/-, within 14 days from 17.11.2020, i.e., the date

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of the demand notice issued under Section 95(4) {b} of IBC as he has failed to pay unpaid debt in default.

38. In all the aforesaid cases, the Applicant has proposed the name of Mr. Kizhakkekara Kuriakose Jose, Insolvency Resolution Professional having Registration No. IBBI/IPA-001/IP-P00445/2017-2018/10788, office at K.K Jose & Associates, Yenvee Complex, Temple Road, Aluva -683101 as the Resolution Professional in this matter and his consent has been filed along with this application.

39. The learned Counsel for the Respondent has made his submissions basically on the periphery of maintainability of this application, as held by the Supreme Court in Gaurav Hargovindhbhai Dave V. Asset Reconstruction Company (India) Limited Another [(2019) 10 SCC 572], where the date of default was stated in the Application to be the date of NPA, limitation will run from the date of NPA. In the present application the date of default is on 24.07.2017 therefore such application ought to have been filed on or before 23.07.2020. The present Application filed on 11.12.2020 is, therefore, time barred. It is further stated that the CIRP cannot be initiated against more than one guarantor simultaneously for the same set of debt and default as held by Hon' ble NCLAT in its order dated 08.01.2019 in Company Appeals (AT) (Insolvency) No. 346 and 347 of 2018 in the matter of Dr. Vishnu Kumar Agarwal V. M/s. Piramal Enterprises Limited.

40. We have heard the learned counsel for Applicant and Respondents at length, considered their submission and perused the documents and evidences placed on record by both sides. In this connection it is profitable to quote Section 95 of I&B Code, 2016: –

“(1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.

(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against— (a) any one or more partners of the firm; or (b) the firm.

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the

proceedings under the applications as it thinks just.

(4) An application under sub-section (1) shall be accompanied with details and documents relating to— (a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application; (b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and (c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified. ”

41. In view of the above provision and that the applicant has complied with Section 95(4) quoted above and also that the demand notice dated 17.11.2020 has been received by the respondent and the

respondent failed to make the payment, we have come to the conclusion that there is a default on the part of the Personal Guarantor/Respondent by not fulfilling the debts owed to the Corporate Debtor as per the clauses contained in the Consent Terms in respect of the outstanding financial debt which is apparent from the documents placed on record. Hence, this Tribunal ordered as under: -

ORDER

- I. All the aforesaid applications filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 7(2) of the Insolvency and Bankruptcy Rules, 2019 by **the State Bank of India** against **Personal Guarantors** of the Corporate Debtor **M/s. Green Gateway Leisure Private Limited** are 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 in relation to all the debts and will cease to have effect on the date of admission
- III. During such interim-moratorium period-
 - (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. Since the applicant/creditor has suggested the name of **Mr. Kizhakkekara Kuriakose Jose** as the Resolution professional, and whose name appears in the panel issued by the Insolvency and Bankruptcy Board of India for the period from 01.07.2021 to 31.12.2021 for Kochi, Kerala, this Bench appoints **Mr. Kizhakkekara Kuriakose Jose**, Insolvency Resolution Professional having **Registration No: IBBI/IPA-001/IP-P00445/2017-2018/10788**, office at **K.K Jose & Associates, Yenvee Complex, Temple Road, Aluva -683101 [e-mail id - kkjoseca@gmail.com]** as the Resolution Professional (RP) to carry out functions as mentioned under the Insolvency and Bankruptcy Code, 2016. 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 for an advance payment of **Rs. 2, 00, 000 (Rupees Two Lakhs only)** to 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 recommendations with reasons in writing for acceptance or rejection of this Application within ten days from the date of receipt of this

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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 IBAs for further proceedings on **25.10.2021**.

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IA(IBC)/49/KOB/2021 in IBA/42/KOB/2020 stands dismissed.

Dated this the 6th day of October, 2021.

Sd/-

(Rajesh Sharma)
Member (Technical)

Linju

Sd/-

(Ashok Kumar Borah)
Member (Judicial)

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