

IBA/42 to 45/KOB/2020

**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

(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: 10th June, 2022

Coram:

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

Hon'ble Mr. Anil Kumar. B, Member (Technical)

IBA/42/KOB/2020

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

: Applicant/Creditor

Versus

Sahadulla M.I
69, Rastanura
RPD Mark
KuravanKonam
Kowdiar
Thiruvananthapuram

: Respondent

IBA/42 to 45/KOB/2020

IBA/43/KOB/2020

State Bank of India
Stressed Asset Resoluion 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

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Parties/Counsel present (through video conference)

For Applicant : Shri Vinod P.V, Advocate

For Respondents : Shri. Sivasankar G, Advocates (IBA/42/KOB/2020)

: Mr.Manjuladevi, KSR & Company

(IBA/43/KOB/2020, IBA/44/KOB/2020,

IBA/45/KOB/2020)

ORDER

Per: Ashok Kumar Borah, Member (Judicial)

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.

1. These Applications have been filed by the Applicant (Financial 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 **M/s. Sahadulla M.I, Zaheer E.N, E.Iqbal, and E.M Najeeb**, Personal Guarantors of **M/s. Green Gateway Leisure Private Limited**, the Corporate Debtor in **IBA/01/KOB/2020**, for initiating Insolvency Resolution Process against the personal guarantors for the default amount of Rs. 72,63,09,421/- in respect of credit facility availed by M/s. Green Gateway Leisure Private Limited.
2. The brief facts as stated by the parties in their pleadings are as under: -

The Corporate Insolvency Resolution Process was initiated against Corporate Debtor Company M/s. Green Gateway Leisure Private Limited vide Order dated 15.10.2020 in IBA/01/KOB/2020 filed under Section 7 of the I&B Code, 2016 by the Union Bank of India. The Corporate Debtor was incorporated for

IBA/42 to 45/KOB/2020

the purpose of development of a five star deluxe 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 thereafter leased in favour of the Corporate Debtor. For the purpose of implementation of the aforesaid project the Corporate Debtor availed credit facilities from the applicant to the tune of Rupees 67,64,050 on 14.01.2010, a term loan of 20 crores on 24.02.2010, another term loan of 20 crores on 20.05.2010 and 8 crore on 09.02.2015 amounting to a total of Rs. 48.67 crore in following accounts:-

Account No	Facility	Limit
33438912824	Term Loan	20.67
67114165809	Term Loan	20.00
67319127555	Term Loan	8.00

3. For the purpose of securing the credit facilities, there was pari passu first charge on entire fixed assets of Corporate Debtor and the aforesaid personal guarantees and a corporate guarantee of Air Travel Enterprises India Limited.
4. Subsequently based on default by the Corporate Debtor in repayment of credit facilities, the accounts were declared as NPA on 28.06.2017, 29.06.2017, and 24.07.2017. Notice was issued to the Corporate Debtor for repayment/regularization of the account but Corporate Debtor failed to repay the debt and notice under SARFAESI Act was issued on 29.12.2017 to repay due amount of Rs. 53,01,79,290/-. Notice to Respondents/guarantors was also issued in this regard and thereafter applicant took possession of the secured asset of the Corporate Debtor. Based on a request of Corporate Debtor, OTS scheme was sanctioned on 30.09.2019 but again the Corporate Debtor failed to comply with the same and it became infructuous. As on 15.10.2020, the total outstanding due of Corporate Debtor was Rs.72,63,09,421/- on the aforesaid 3 accounts maintained with the applicant bank.

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5. Further to that the applicant initiated CIRP by demand notice dated 17.11.2020 to which respondents replied vide letter dated 30.11.2020 with the allegations that term loan agreements were varied and contract shall be novated and that the Respondent in IBA/42/KOB/2020, Sahadulla M I had not executed the loan documents and that his signature were forged.
6. The Respondent in IBA/42/KOB/2020, Mr. Sahadulla M I in his reply pointed out the issue of forgery in loan documents and sought for scientific investigation and report of the same by an approved expert of Forensic Science Laboratory by way of separate IA which has been dismissed by this Tribunal vide order dated 06.10.2021. Other Respondents in their reply raised the question of limitation and maintainability of the application on that ground.
7. This Tribunal heard both the applicant and the respondents in each cases at length and thereafter allowed the application vide order dated 06.10.2021 since there is default on the part of the Personal Guarantors/Respondents 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. The interim moratorium was effective from date of filing of the applications by the Applicant in relation to all the debts and shall cease to have effect on the date of admission. Mr. Kizhakkekara Kuriakose Jose, Insolvency Resolution Professional was appointed as the Resolution Professional (RP) to carry out functions as mentioned under the Insolvency and Bankruptcy Code, 2016.
8. Pursuant thereto the RP filed the report under Section 99 of the code on 22.10.2021 and the Tribunal after careful consideration and hearing both sides admitted the application vide Order dated 21.01.2022. The moratorium was declared in relation to all the debts from date of admission of the application which shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. The RP was directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing the Order on the website of the NCLT Kochi Bench, inviting claims from all Creditors, within 21 days of such issue and to prepare a list of creditors and the preparation of a repayment plan under

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Section 105 along with his report, containing a proposal to the Creditors for restructuring of his debts or affairs.

9. In the meantime CIRP was in effect, the Respondents/Personal Guarantors had filed appeals before Hon'ble NCLAT against orders dated 06.10.2021 and 21.01.2022 of this Tribunal in which the Hon'ble NCLAT vide order dated 27.01.2022 in appeal No. CA (AT)(INS) 310 of 2021 & 07.02.2022 IN CA (AT)(INS) 49 of 2022 granted a stay on further proceedings before this Tribunal.
10. While the matters were pending, Interlocutory Applications IA(IBC)/112-115/KOB/2022 were filed in the aforesaid applications by the applicant wherein it was stated that a request dated 18.02.2022 for a Compromise Settlement Proposal was made by Corporate Debtor to the Applicant which was sanctioned by the Applicant on 23.03.2022. According to the proposal, Corporate Debtor was required to pay Rs.28 Crore towards the settlement of dues and also bring 100% cash margin and retain as fixed deposit against the Bank Guarantee and to make payment of the outstanding due amount of Rs.56.29 Lakhs before 31st March 2022. As stated by the applicant, the Corporate Debtor accepted the said proposal on 24.03.2022 and the settlement was completed as agreed wherein Rs.6.77 Crore was paid by Corporate Debtor into the No Lien Account as upfront, a sum of Rs.0.23 Crore from the TDR account held in the name of Corporate Guarantor M/s AIR Travel Enterprises India Limited were appropriated towards the Settlement dues, 21 crore was paid by Corporate Debtor on 31.03.2022 and the amount of the margin money was paid as on 29.04.2022.
11. As the amount due to the Applicant Financial creditor was settled by Corporate Debtor as stated above and the applicant has specifically acknowledged the payment in the Interlocutory Applications filed by them, the liability of the Personal Guarantors/ Respondents in all the above cases also stand settled as agreed between the parties. IA(IBC)/112 to 115/KOB/2022 were therefore allowed by this Tribunal vide order dated

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10.06.2022 granting permission to the applicant to withdraw the applications IBA/42/KOB/2020, IBA/43/KOB/2020, IBA/44/KOB/2020, IBA/45/KOB/2020.

12. In view of the settlement between the parties, **IBA/42/KOB/2020, IBA/43/KOB/2020, IBA/44/KOB/2020, IBA/45/KOB/2020 stand dismissed as withdrawn.**

Dated this the 10th day of June,2022.

Sd/

**(Anil Kumar. B)
Member (Technical)**

Rkb

ASHOK KUMAR BORAH
BORAH
**(Ashok Kumar Borah)
Member (Judicial)**

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