

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

CP(IBC)/7/KOB/2023

*(Under Section 95(1) of IBC, 2016 read with Rule 7(2) 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:

Siemens Financial Services Private Limited Vs. Mr. Raheem Rautther Meeran

MEMO OF PARTIES:

SIEMENS FINANCIAL SERVICES PRIVATE LIMITED, Plot No. 2, Sector
No.2, Kharghar Node, Navi Mumbai 410210;

... Petitioner

-Versus-

MR. RAHEEM RAUTHER MEERAN, 16C-D, 42/2318Q 2, Link Heritage,
68/1256. Chittur Road, Kacheripady, Ernakulam, Kerala 682018;

... Respondent/Personal Guarantor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Petitioner : Mr. Vinod P V, Advocate

For Respondent : Nil

ORDER

1. The present application has been filed by Applicant Creditor, under section 95(1) of the Insolvency and Bankruptcy Code, 2016 ("Code") 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 (“Rules”) by **Siemens Financial Services Private Limited** for initiation of the insolvency resolution process of **Mr. Raheem Rautther Meeran**, Personal Guarantor to M.S.S. Hospital and Nursing College Pvt. Ltd. The brief facts of the case are as follows:

2. M.S.S. Hospital and Nursing College Pvt. Ltd. (“corporate debtor”) availed credit facilities to the tune of Rs. 2,13,77,787 from the applicant for the purchase of SOMOTOM Scope 16 Slice CT, medical and other allied equipment under finance agreement no. A8593817 dated 12.01.2018 and A8593814 dated 02.05.2018 (“credit facilities”).
3. The respondent along with Mr. P S Amal had provided a personal guarantee to the applicant for the above-mentioned credit facilities availed by the corporate debtor through Finance (Loan cum Hypothecation cum Guarantee) Agreement dated 12.01.2018 and Finance (Loan cum Hypothecation cum Guarantee) Agreement dated 02.05.2018.
4. The applicant submits that the corporate debtor defaulted on repayment of the credit facilities and the same was declared as non-performing assets on 12.04.2019.
5. The applicant has submitted the statement of accounts for credit facility no. A8593817 dated 12.01.2018 and A8593814 dated 02.05.2018 evidencing default on part of the corporate debtor in repayment as per schedule.
6. The applicant invoked the guarantee, and a demand notice was sent to the respondent on 09.08.2022 under section 13(2) of the SARFAESI Act, 2002.
7. The applicant has served a demand notice on the guarantor in Form B as required under section 95(4)(b) of the Code read with Rule 7(1) of the Rules on 20.08.2022 demanding payment of the amount in default of Rs. 3,63,51,369 as on 20.07.2022.

8. The corporate debtor/guarantors have replied to the notice under section 13(2) of the SARFAESI Act, 2002 and the demand notice under Rule 7(1) of the Rules on 13.10.2022 stating that the corporate debtor had made regular payments until August 2018. Following the impact of floods that ravaged the state of Kerala, the corporate debtor which has its place of business in Alappuzha District, was unable to service the debt in a timely manner. Further, the corporate debtor has requested for one-time settlement, which was rejected by the creditor. However, the corporate debtor or the personal guarantors have not made any payment towards the amount due.
9. The creditor served a copy of the application to the respondent, personal guarantor on 31.01.2023, as well as to the Corporate Debtor on 28.03.2023 through Speed Post and email.
10. The amount of default of Rs. 3,63,51,369 as on 20.07.2022 is greater than the minimum threshold of Rs. 1,000 for application under Part III of the code.
11. The application filed on 01.02.2023 is not barred by limitation as the amount was declared as a non-performing asset on 12.04.2019, which is the date the right accrues to the creditor and the period of limitation begins to run. The period of three years for purposes of computing limitation is taken after considering the order of the Hon'ble Supreme Court in *Suo Moto WPC No. 3 of 2020* which excluded the period from 15.03.2020 till 28.02.2022 for purpose of any limitation.
12. The application has been filed through the insolvency professional, **Mr. K. Parameshwaran Nair**, (IBBI/IPA-001/IP-P01773/2019-20/12702) having registered address at 37/1736E, Kripasagaram, K. Murali Road, Kadavanthara, Kochi – 682020. The insolvency professional has submitted his authorisation for assignment no. AA1/12702/02/061123/104724 from IIIP of ICAI dated 07.11.2022 and his certificate of registration from the Insolvency and Bankruptcy Board of India along with the application, and declared his eligibility to act as the RP in Part IV of the application.

9. The demand notice dated 20.08.2022 has been received by the Respondents/Personal Guarantors on 25.08.2022, and that the Respondent/Personal Guarantor having acknowledged the debt has failed to make the payment, we have come to the conclusion that there is a default on the part of the respondent/Personal Guarantor in respect of the outstanding debt which is apparent from the documents placed on record. It is also satisfied that the debt in default is above the threshold limit prescribed under the Code and that the application is filed within the limitation period. Even though the CIRP has not been initiated against the corporate debtor, in view of the decision of the Hon'ble Supreme Court in *Mahendra Kumar Jajodia vs. State Bank of India*, proceedings can be initiated against the personal guarantors regardless of whether a CIRP has been initiated against the CD. Hence, this Tribunal ordered as under: -
10. The application 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 Siemens Financial Services Private Limited against Personal Guarantor of the Corporate Debtor, M.S.S. Hospital and Nursing College Pvt. Ltd., Mr. Raheem Rautther Meeran is **allowed** with the following directions:
- I. The interim moratorium under Section 96 of the Code has commenced on the date of the application by the Creditor i.e., 01.02.2023 in relation to all the debts and will cease to have an effect on the date of admission.
 - II. During such an interim-moratorium period:
 - i. any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and
 - ii. the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.
 - III. Since the applications have been filed through **Mr. K. Parameshwaran Nair (IBBI/IPA-001/IP-P01773/2019-20/12702)**, he is appointed as the Resolution Professional under section 97 of the Code to carry out the

insolvency resolution process of **Mr. Raheem Rautther Meeran**. 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.

- IV. This Tribunal also directs an advance payment of Rs.2,00,000 (Rupees Two Lakhs only) to be paid by the Applicant/Creditor to the Resolution Professional immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).
- V. The Resolution Professional shall examine the application filed under section 95 within 10 days of appointment and submit a report to this Tribunal recommending approval or rejection of the application along with reasons for the recommendation.
- VI. The resolution professional shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. 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 resolution professional for the purposes of examining an application may seek such further information or explanation in connection with the application under section 99(4) as may be required from *the debtor or the creditor or any other person* who, in the opinion of the resolution professional, may provide such information. The persons from whom information or explanation is sought shall furnish such information or explanation within seven days of receipt of the request.
- VIII. The Registry is hereby directed to send e-mail copies of the order forthwith to the creditor, personal guarantor, corporate debtor and the Resolution Professional. The Registry shall place a compliance report of this direction in this file.

- IX. A certified copy of the order is to be issued upon compliance with requisite formalities.
- X. List the above IBAs for further proceedings on 02.08.2023.
11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,
12. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.06.30 17:22:59 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.06.30 17:25:37 +05'30'
RAJ

P. Mohan Raj
Member (Judicial)

Signed on this, the 30th day of June, 2023.

Rohit.