

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

**IA(IBC)/394/KOB/2022**

**IN**

**CP(IB)/25/KOB/2021**

*(Under Section 33(2) and 34(1) of IBC, 2016)*

***In the matter of:***

*Korea Trade Insurance Corporation Vs. Tenny Jose Limited;*

**MEMO OF PARTIES:**

SHRI. PRATHAP PILLAI, IBBI/IPA-003/ICAI-N-00371-2021-22/13822  
Resolution Professional of M/s. Tenny Jose Limited M/s. Finance Attorneys,  
Myhome Building Dharmalayalam Road, Thampanoor, Trivandrum – 695 001;

**...Applicant**

***Coram:***

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

***Appearances (through video conferencing)***

For Applicant : Mr. Prathap Pillai, RP

**Order reserved on: 23.11.2022  
Order pronounced on: 16.12.2022**

**ORDER**

1. The present Application has been filed by, Mr. Prathap Pillai, Resolution Professional of Corporate Debtor Tenny Jose Limited. Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor under section 7 of IBC 2016 was admitted by this Adjudicating Authority on 21.12.2021. Mr. Krishnaraj was appointed as an Interim Resolution Professional. In the 1<sup>st</sup> Committee of Creditors (COC) meeting held on 21.01.2022, the Committee of Creditors (COC) resolved to replace the IRP under Section 22 (2) of the IBC and vide order dated 14.03.2022, the applicant was appointed as Resolution Professional (RP).

2. In pursuance of CIRP order the IRP effected public announcement on 24.12.2021. It is submitted that the COC comprised of six Financial Creditors with admitted claim of Rs.59,68,18.619.38/- and three Operational Creditors, who are holding more than 10% of the claim and along with three Suspended Directors. Total claim admitted is Rs.193,3262352.851/-. That Applicant Resolution Professional convened the 4th CDC meeting on 02.04.2022 and CDC in the said meeting authorised the Resolution Professional to appoint a Forensic Auditor.
3. It is submitted that Resolution Professional presented Evaluation Matrix ("EM"), Expression of Interest ("E01"), and other supporting documents that are to be executed by Prospective Resolution Applicant in the 5m CDC meeting held on 21.04.2022 and thereafter published Form C on 26.04.2022 in two newspapers [English and Regional Language]. Pursuant to the publication of Form G on 26.04.2022, Resolution Professional received only casual enquiries from three Applicants. The Suspended Directors submitted Expression of Interest on 01.06.2022.
4. The 6<sup>th</sup> COC meeting held on 07.06.2022 deliberated the eligibility of Suspended Directors to submit a Resolution Plan. The COC then resolved to allow the Suspended directors to submit a resolution plan. Being an MSME Company they were allowed to submit a resolution plan within the strict parameters of Section 29A of the IBC Code. It is submitted that. in the meantime, Transaction/Forensic Auditor submitted his preliminary report on 04.06.2022 and had identified several transactions coming within the corridors of section 43,45,50 and 66 of the [BC Code, it is also submitted that the copy of the said report was also given to the Suspended Directors for their views and comments.
5. It is submitted that 7<sup>th</sup> COC meeting held on 07.06.2022 examined, Whether or not the Suspended Directors are eligible to submit resolution plan. Since

the transaction/forensic audit report highlighted several areas of irregularity. In the said meeting the Suspended Directors were given one week time to come up with their explanation. The said meeting, it was resolved to seek an extension of the CIRP for 90 days. However, by order dated 28.06.2022, this Tribunal extended the CIRP for a further period of 60 days to complete the process on or before 21.08.2022.

6. Thereafter, in the 8<sup>th</sup> COC meeting held on 21.06.2022. decided that the Suspended Directors are eligible to submit the Resolution Plan so long as there are no adverse findings from the Adjudicating Authority. The said meeting also authorised the Resolution Professional to file Avoidance Application under section 43,4550 and 66 of the IBC Code. The COC in its 8<sup>th</sup> meeting held on 21.06.2022. discussed as item No.6, each and every item that are to be reported as avoidance transaction and views of the Suspended Directors were also recorded. Subsequently the Transaction/Forensic auditor submitted his final signed audit report on 23.06.2022. Thereafter four avoidance application as detailed below were filed on 15.07.2022 and are pending:

- i. IA (IBC)/205/KOB/2022, Application filed under section 45H]
- ii. IA (IBC)/ 206/KOB/2022, Application filed under section 43(1)
- iii. IA (IBC)/ 207/KOB/2022, Application filed under section 50
- iv. IA (IBC)/ 204/KOB/2022, Application tiled under section 66(1)

7. It is submitted that in the 10<sup>th</sup> COC meeting held on 27.07.2022. Resolution Professional presented the Resolution plan submitted by the Suspended Directors. Since, commercial Viability of the said plan largely depended on how the Personal Guarantee and Corporate Guarantee held by South Indian Bank and State Bank of India are dealt with. Direct

negotiation between Suspended Directors and Financial Creditors was then required to be carried out and time was allotted for the same.

8. It is submitted that the 11th COC meeting held on 04.00.2022, South Indian Bank stated that they would require more time as the plan is under evaluation process. State Bank of India stated that they would require the Suspended Directors to offer more value as well as a shorter duration for the completion of the plan. In the said meeting, it was also resolved to seek further extension of 60 days. And accordingly, IA (IBC) 221/KOB/2022 was filed, and when the matter was listed this Bench gave liberty to the RP to seek extension for 90 days and accordingly in the 12<sup>th</sup> COC meeting held on 19.08.2022 resolved as item no. 6 with 92.42% vote to seek extension for 90 days. Consequently, IA (IBC) 233/KOB/2022 was filed and this Tribunal allowed further period of 90 days from 23.08.2022 on 29.08.2022.
9. The 13<sup>th</sup> COC meeting was convened on 05.09.2022, reviewed the Status of the plan, as item no. 5. The COC was of the View that the prospective Resolution Applicant need to speed up the negotiation and submit the final plan. It is submitted that the prospective resolution applicant/suspended directors, informed the Resolution Professional that they were not successful in reaching an agreement with the lead Financial Creditors, on settling the personal guarantee/Corporate guarantee and accordingly an acceptable Resolution Plan could not be formulated.
10. In this context Resolution Professional convened the 14<sup>th</sup> COC meeting, to decide whether to further endeavour for Resolution or accept Liquidation as the final option. It was then decided to defer the discussion to the next meeting. As Financial Creditors choose to take concurrence from their senior managements.

11. Accordingly, the 15<sup>th</sup> meeting of the COC was held on 21.10.2022 at 11.00 AM. through video conferencing. The COC resolved to liquidate the Corporate Debtor with 98.41% of vote and authorised the Resolution Professional to file the Application under section 33(2) of the I & B Code. The resolution is reproduced below:

*“Resolved that the prospective Resolution Applicant having failed to submit a Resolution plan that complies with the RFRP and other requirements of the IBC Code, and there being no scope of Resolution of the Corporate Debtor, the COC in its 15<sup>th</sup> meeting held on 21.10.2022 by Video Conferencing mode, authorised Resolution Professional Mr. Prathap Pillai to file Section 33(2) Application to the Adjudicating Authority to liquidate the Corporate Debtor.”*

12. It is submitted that the COC also reviewed the possibility of Assessment of Compromise as envisaged under Regulation 39BA of the Insolvency and Bankruptcy Board of India [Insolvency Resolution Process for Corporate Persons] Regulation 2016. The CDC was unanimous that the scope of compromise arrangement is in the negative, as the Corporate Debtor is not a going concern, with no other operable assets and confirmation from the Corporate Debtor to the Resolution Professional that they are vacating the corporate office.
13. It is further submitted that the COC also looked at the possibility of assessment of sale of the Corporate Debtor as a going concern as mandated under Regulation 39C of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation 2016. COC deliberated item no.8 and recorded that Corporate Debtor not being an Operating Concern and having no assets under its disposal, an option of sale as a going concern, is not a viable option.

14. Considering the situation and after hearing the learned Resolution professional, we are of the view that further chances of revival of the corporate debtor is almost nil, in the circumstances the prayer for order of Liquidation is accepted.
15. In the result the Tenny Jose Limited, corporate debtor is ordered to be liquidated.
16. The applicant Mr. Prathap Pillai, Resolution Professional of Corporate Debtor, Tenny Jose Limited, having his office at M/s. Finance Attorneys, My home Building, Dharmalayam Road, Thampanoor, Trivandrum-695 001 has given a written consent to appoint him as a Liquidator as required under Section 34 (1) of IBC, 2016 . Hence, Mr. Prathap Pillai with Registration No: IBBI/IPA-003/ICAI-N-00371-2021-22/1382 is appointed as liquidator of corporate Debtor Tenny Jose Limited.
17. The Liquidator is directed to forthwith take into his custody all the assets, Properties, and actionable claims of the corporate debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.
18. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.
19. Public Notice as contemplated under section 33(1) of the Code shall be issued in one morning, English daily and in one morning regional language newspapers.
20. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel, shall cease to exist in accordance with Section 34

- (2) of the Code. These powers shall henceforth vest in the Liquidator. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor.
21. On initiation of the Liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor, save and except the liberty to the liquidator to institute a suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.
22. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the liquidator.
23. In terms of Section 33(1) (b) (iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Kerala, within whose jurisdiction the Corporate Debtor is registered.
24. The fee of Liquidator to be determined as provided under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.
25. As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.

IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOCHI BENCH

IA(IBC)/394/KOB/2022  
IN CP(IBC)/25/KOB/2021

*In re Korea Trade Insurance Corporation vs Tenny Jose Limited*

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26. 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,
27. 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: 2022.12.16 16:34:24 +05'30'

**Satya Ranjan Prasad**  
**Member (Technical)**

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MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ  
Date: 2022.12.16 15:51:07 +05'30'

**P. Mohan Raj**  
**Member (Judicial)**

Signed on this the 16<sup>th</sup> day of December, 2022

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