NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) (Ins) No.117/2024
(IA Nos.315 & 316/2024)

In the matter of:

Reena Paul,
Marikudiyil House, Pazhanganad,
Kizhakkambalam,
Ernakulam - 683 562. **… Appellant**
V
CA Francis Mathew,
Resolution Professional,
IBBA/IPA-001/IP-P00995/2017-2018/11642
Illickal (H), Pakalomattam P.O,
Kuravilangadu, Kottayam,
Kerala – 686 633. **...Respondent**

Present :

For Appellant : Mr. K. Jagannathan, Advocate
For Mr. Anil Relwani, Advocate

For Respondent : Mr. E. Om Prakash, Senior Advocate
For Mr. Ashwin Shanbhag & Ms. Nandhini Ramalingam, Advocates

WITH

Company Appeal (AT) (CH) (Ins) No.118/2024
(IA Nos.317 & 319/2024)

In the matter of:

KG Paul
Marikudiyil House, Pazhanganad,
Kizhakkambalam,
Ernakulam - 683 562. **… Appellant**
V
CA Francis Mathew,
Resolution Professional,
IBBA/IPA-001/IP-P00995/2017-2018/11642
Illickal (H), Pakalomattam P.O,
Kuravilangadu, Kottayam,
Kerala – 686 633. **...Respondent**

Present :

For Appellant : Mr. K. Jagannathan, Advocate
For Mr. Anil Relwani, Advocate

For Respondent : Mr. E. Om Prakash, Senior Advocate
For Mr. Ashwin Shanbhag & Ms. Nandhini Ramalingam, Advocates

WITH

Company Appeal (AT) (CH) (Ins) No.119/2024
(IA Nos.320 & 322/2024)

In the matter of:

Mathew John,
Marikudiyil House, Pazhanganad,
Kizhakkambalam, Ernakulam - 683 562. **… Appellant**
V
CA Francis Mathew,
Resolution Professional,
IBBA/IPA-001/IP-P00995/2017-2018/11642
Illickal (H), Pakalomattam P.O,
Kuravilangadu, Kottayam,
Kerala – 686 633. **... Respondent**

Present :

For Appellant : Mr. K. Jagannathan, Advocate
For Mr. Anil Relwani, Advocate

For Respondent : Mr. E. Om Prakash, Senior Advocate
For Mr. Ashwin Shanbhag & Ms. Nandhini Ramalingam, Advocates

WITH

Company Appeal (AT) (CH) (Ins) No.120/2024
(IA Nos.323 & 324/2024)

In the matter of:

John Zachariah
Marikudiyil House, Pazhanganad,
Kizhakkambalam, Ernakulam - 683 562 **… Appellant**
V
CA Francis Mathew,
Resolution Professional,
IBBA/IPA-001/IP-P00995/2017-2018/11642
Illickal (H), Pakalomattam P.O,

Kuravilangadu, Kottayam,
Kerala – 686 633. **...Respondent**

Present :

For Appellant : Mr. K. Jagannathan, Advocate
For Mr. Anil Relwani, Advocate

For Respondent : Mr. E. Om Prakash, Senior Advocate
For Mr. Ashwin Shanbhag & Ms. Nandhini Ramalingam, Advocates

WITH

Company Appeal (AT) (CH) (Ins) No.121/2024
(IA Nos. 326 & 328/2024)

In the matter of:

Annu Mathew
Marikudiyil House, Pazhanganad,
Kizhakkambalam, Ernakulam - 683 562. **… Appellant**

V

CA Francis Mathew,
Resolution Professional,
IBBA/IPA-001/IP-P00995/2017-2018/11642
Illickal (H), Pakalomattam P.O,
Kuravilangadu, Kottayam,
Kerala – 686 633. **...Respondent**

Present :

For Appellant : Mr. K. Jagannathan, Advocate
For Mr. Anil Relwani, Advocate

For Respondent : Mr. E. Om Prakash, Senior Advocate
For Mr. Ashwin Shanbhag & Ms. Nandhini Ramalingam, Advocates

JUDGMENT
(Hybrid Mode)

[Per : Justice Sharad Kumar Sharma, Member (Judicial)]

These five Company Appeals, since they carry and engage consideration of common question of fact and law for the purposes of brevity, they are being decided together.

2. In all these Company Appeals, the Appellants are admittedly the personal guarantors who stood as personal guarantors, as against the financial

assistance, which was extended to the Corporate Debtor M/s. Unitek Power Solutions India Limited by M/s. JM Financials Asset Reconstruction Company Ltd., the financial creditor, who initiated proceedings under Section 95 of the I & B Code, 2016, as against the Appellant, the personal guarantors herein.

3. It is an admitted case by the Appellants, i.e., the personal guarantors, that as the consequence of the admission of the Section 95 application under the I & B Code, the Appellants have been put to face the personal insolvency process by an order that was passed by the Learned NCLT on 17.03.2022 in respective Company Petitions, which are chronologically detailed hereunder: -

(i) CP(IBC)/13/KOB/2021, (ii) CP(IBC)/17/KOB/2021, (iii) CP(IBC)/15/KOB/2021, (iv) CP(IBC)/16/KOB/2021 & (v) CP(IBC)/19/KOB/2021. The respective orders were passed under Section 95 of the I & B Code, admitting the Personal Guarantors into personal insolvency process. The said orders dated 17.03.2022 under Section 100 of the I & B Code have attained finality and have not been subjected to challenge, any further by any of the Appellants. Here, even in these Company Appeals, the order of admission of personal insolvency proceedings by order dated 17.03.2022 is not under challenge or even questioned.

4. Consequent to the initiation of proceedings by filing of Applications under Section 95 of the I & B Code, 2016, the Respondent was appointed as the RP, in terms of provisions contained under Section 97 of the I & B Code, 2016, as against the order that was passed under Section 95 of the I & B Code on

17.03.2022. The Appellants plead that, Writ Petition No.1615/2022, has been filed before the Hon'ble Kerala High Court against the order dated 17.03.2022 of admission of the application filed under Section 95 proceedings, which on the date of the institution of the instant Company Appeals, was said to be pending consideration, but as on today when these Company Appeals are being taken up, the Learned Counsel for the Appellant has made a statement at bar that, as of today, no Writ Petition is pending consideration. Hence, the presumption would be that so far as the order dated 17.03.2022 of admitting the Appellants to the personal insolvency process has attained finality qua the respective Appellants.

5. It is an admitted case of the Appellant that, as a consequence of his appointment, the RP has issued a paper publication on 31.03.2022, thereby inviting the claims from the various stakeholders in the affairs of Corporate Debtor qua the Appellants and that the claim was received, only from one creditor i.e., JM Financials Asset Reconstruction Company Limited, the petitions before Learned NCLT. It is stated that all 5 Appellants herein were commonly represented through Mr. John Zacharia and they without prejudice to the challenge made by them to the said admission order, submitted a repayment plan as per Section 105 of the I & B Code, 2016, to the Resolution Professional / Respondent on 07.11.2022, which in turn was claimed to have been submitted before the Learned NCLT and was taken on record by Learned NCLT on 16.11.2022. In terms of the provisions contained under Section 106 of the I & B

Code, 2016, to be read with Regulation 10 of IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

6. In furtherance to the report submitted by the Resolution Professional under Section 106 of the I & B Code, 2016, the Respondent summoned the meeting of creditors in accordance with the provisions of Section 107 of the Code to consider the repayment plan, that was submitted by the Appellants. The Committee of Creditors met on 21.11.2022 to consider the repayment plan of Rs.21 Crores submitted by each of the personal guarantors and found it not acceptable. The CoC met subsequently on 02.12.2022 and on 18.01.2023 and on the ground that the personal guarantors could not come up with a modified repayment plan as specified, decided to reject the repayment plan with 100% voting and directed Resolution Professional to file report under Section 112 for order of Learned NCLT. On filing of the report under Section 112, Learned NCLT after conducting the proceedings hearing the parties and perusing the documents, passed order on 28.06.2023 rejecting the Repayment Plan submitted under Section 106 of the Code.

7. The prime ground taken by the Appellant for questioning the propriety of the report of Resolution Professional is that under the personal insolvency process, a group insolvency of all the personal guarantors by a collective consideration of the repayment plan is not contemplated and as such each repayment plan as submitted by the respective personal guarantors under Section 105 of the I & B Code, ought to have been considered independently. Since, it

would be falling under the classification of personal insolvency and it was not a group repayment plan, hence Appellants case is that their repayment plan should have been independently and individually considered.

8. The Appellants contended that owing to the ignorance of the aforesaid stipulations and provisions for consideration of repayment plan to be submitted by the personal guarantors, they had voluntarily participated in the proceedings of consideration of their repayment plan, as a group but that will not make the process of collective consideration of their repayment plans as valid and therefore, the rejection of their repayment plans by the impugned order based on the report of Resolution Professional that was based on collective consideration of their repayment plans would be bad in the eyes of law. The Appellants have further referred to the provisions contained under Section 105 Sub-Section (1) of the I & B Code, contending thereof that the Resolution Professional was to function in consultation with the debtors and to help and guide the personal guarantors for preparing the repayment plans and, for restructuring of their debts, and the affairs of the Corporate Debtor which he has failed to do and this lacuna in the functioning and performance of the duties of the Resolution Professional in the light of the provisions contained under Section 105 Sub-Section (1) of the I & B Code, will make the entire proceedings to be vitiated, and therefore the order of rejection of the repayment plan deserves to be set aside.

9. They have further submitted that the Resolution Professional, erred at law, by running the personal insolvency process on a consolidated or group basis

without considering the distinction between the group insolvency and personal insolvency processes, because the Resolution Professional has proceeded to consider the repayment plan, and though they have participated in the said process without demur, it was because of lack of knowledge and experience on their part and therefore, the entire process of consideration of the repayment plan would suffer from illegality on account of the consideration of repayment plans on a consolidated basis, without the same being foundationed on any legal provisions. Hence, they submitted that their independent repayment plans which were submitted in accordance with Section 105 of the I & B Code, and were respectively subject matter of consideration in the respective interlocutory applications being IA(IBC)114/KOB/2023, IA(IBC)116/KOB/2023, IA(IBC)/115/KOB/2023, IA(IBC)118/KOB/2023 & IA(IBC)119/KOB/2023 have been erroneously considered by the Learned Tribunal and disposed of by the common order by treating it as if they engaged consideration of a common subject matter, which the Appellants contends that otherwise according to the facts on record, each of the repayment plan application furnished by the respective corporate guarantors independently under Section 105 of the I & B Code, 2016, since being independent and distinct to each other, they ought to have been independently considered and should not have been consolidated, while taking a call on the respective Interlocutory Applications preferred under Section 105 of the I & B Code.

10. In a nutshell, it could be summed up that the prime ground of challenge as given by the Appellant, to the impugned order of 28.06.2023, as respectively passed in each of the interlocutory applications detailed above preferred in Company Appeals, deciding the interlocutory applications, suffered from the aforesaid vices that the decision taken there upon the repayment plan, should not have been on the basis of the group personal insolvency process. However the Appellants don't deny the fact that so far as the responsibility was cast upon the Resolution Professional in accordance with Sub-Section (3) of Section 106 of the I & B Code, to be read with Sub-Section (4) of Section 106 of the I & B Code, elaborate deliberations were held while considering each of the repayment plan, which was submitted by the creditors and each individual plan was specifically considered and debated upon in the meeting, as it was stipulated to be held under the spirit of the provisions contained under Sub-Section (3) & Sub-Section (4) of Section 106 of the I & B Code, 2016. The reference made to the contents of recording of the minutes of the meeting as held on 21.11.2022 for considering each of the repayment plan, which has been coloured by the Appellants as if it was a group insolvency resolution process, may not be a correct interpretation which could be given to the minutes of the said meeting of 21.11.2022, simply on basis of holding of a composite meeting or a single joint sitting to discuss the repayment plans because consideration of each repayment plan individually within the parameters of the governing principles was done. As per minutes of meeting recorded on 21.11.2022, it shows that plans were individually considered by the RP, and hence it cannot be said that the repayment plans were being

considered on a consolidated basis because each of the independent applications that was preferred under Section 105 of the I & B Code was deliberated independently and decided independently too, consequently it was rejected and the rejection too was followed by passing of an independent orders in relation to the respective IAs that was preferred by the Appellant, personal guarantors.

11. In those eventualities, the principle that has been enshrined in the matters of ***Vijay Kumar Jain Vs Standard Chartered Bank***, as rendered by the Hon'ble Apex Court, in Civil Appeal No.8430/2018 laying down the principles emphasizing the need of the erstwhile management of Corporate Debtors and the personal guarantors to be involved in the discussion on the repayment plan with the creditors for resolution, revival & repayment was fully followed in the meeting, that was held on 21.11.2022. Hence, it cannot be said that the spirit of the Judgment of Vijay Kumar Jain (supra), as referred to, was not followed, particularly when the respective plans were individually deliberated upon and considered by the Resolution Professional in the meeting which was held under Sub- Section (3) & Sub-Section (4) of Section 106 of the I & B Code, 2016. On perusal of the impugned order, if we go into the observation and the findings which has been made, it reflects that the determination, has been made on each of the respective repayment plan, with an independent exercise of commercial wisdom based upon the consideration of the terms of respective repayment plans, and thus it met with the very objective of personal insolvency process and it was

not a group insolvency, as it has been attempted to be portrayed by the Appellants in the appeal in question.

12. We, after giving a thoughtful consideration to the arguments extended by the Learned Counsel for the Appellants and particularly in the light of the findings that has been recorded by the Learned Tribunal in the impugned order, come to the conclusion that, even the Learned Tribunal, while making reference to the minutes of the meeting held on 21.11.2022, had considered the repayment plans individually and has recorded its findings in respect of each of the repayment plans, that were considered by the CoC and rejected on the ground that the repayment plans offered Rs. 21 crores as against the expected amount of at least Rs. 25 crores, along with a deposit of 10% of upfront in cash.

13. The Learned Tribunal has thus recorded that in the proceeding, which was held by Resolution Professional under Section 106 of the I & B Code, he had given clear prior information to each of the personal guarantors who, after the meeting of 21.11.2022, had sought time till 29.11.2022 to submit their revised offer, that on 01.12.2022 the personal guarantors submitted their revised offer of Rs.24 crores through Mr. John Zacharia, and that CoC agreed to the said proposal subject to certain conditions as it was observed in the meeting that was held on 02.12.2022, which would once again would be a meeting in the light of the provisions contained under Section 106 of the I & B Code, 2016, not even that the findings and that personal guarantors, had agreed, subsequent to the meeting that was held on 02.12.2022 to authorise Mr. John Zacharia, one of the personal

guarantors by giving NOC and undertaking given by all the personal guarantors to settle the amount. It would amount to that, in fact, the proceedings, which was being taken up on 02.12.2022, was a consenting proceedings and consequent thereto, all the conditions put by the CoC therein were intimated to each of the personal guarantors, who had themselves sought an extension of time to take a final decision. Further, based on the decision of CoC in its meeting that was held on 19.12.2022, extension of time for 30 days were sought and Learned Tribunal too has granted till 05.01.2023 for submission of the modified repayment plan. But when despite of the repeated reminders and extension of time granted the personal guarantors did not respond and did not provide the modified repayment plan as per the conditions specified in the CoC meeting on 19.12.2022, the CoC in its meeting held on 18.01.2023, decided by 100% voting of the Financial Creditors to reject the repayment plans that were individually submitted by the personal guarantors and to direct the Resolution Professional to file the report under Section 112 of the I & B Code, 2016, before Learned NCLT for orders.

14. At this appellate stage, the arguments that have been extended by the Learned Counsel for the Appellants in the light of the ground, which had been taken by the Appellant in the instant Company Appeals, will have to be read in the context of the adjudication sought to be made to the respective IAs preferred by each of the Appellants for the purpose of consideration of the repayment plan, as submitted under Section 105 of the I & B Code. The instant Company Appeals have to be confined to be considered in the light of the argument

extended by the Learned Counsel for the Appellants qua the consideration of the repayment plan only and in the light of the minutes recorded in the various meetings which were held, as observed in the impugned order, where despite of the assurance granted, the personal guarantors have not attempted to modify their repayment plans. In that eventuality, the Learned Tribunal did not have any other option, but to exercise its power under Section 114(1) of the I & B Code and to reject the repayment plan, and that is what has been arrived at by the impugned order, where the Learned Tribunal, after giving finding qua the method and procedure adopted for consideration of the personal repayment plans of each of the personal guarantors has appropriately rejected the same. At no point of time in any of the process that were adopted, and in any of the minutes of the meetings conducted, it reflects that it was a group insolvency process, as it has been sought to be projected by the Appellants in the instant Company Appeals nor any of the minutes, which were considered by the Learned Tribunal. Since there was an apparent failure on the part of the Appellants to furnish the modified repayment plan within the time period, as it was prayed for by them in the light of the discussions held on 29.11.2022 and on 01.12.2022, and since there was an apparent default on part of Appellants, by not submitting the repayment plan as it was sought by them, the ground taken by the Appellants as contended in the instant appeals is not available to them. Further, admittedly it had never been the Appellant's case that the finding, which has been recorded in the impugned order passed by Learned Adjudicating Authority is perverse and contrary to the records. In that eventuality, we can safely conclude as under: -

(i) That after the submission of the repayment plan under Section 105 of the I & B Code, 2016, the Resolution Professional, did hold a number of meetings under Section 106 of the I & B Code, 2016, for individual consideration of plans.

(ii) During the course of the various proceedings that were held before the Resolution Professional, the plans of each of the Appellants / personal guarantors were independently and individually considered and deliberated upon, where the personal guarantors themselves had assured to give a modified proposal of the repayment plan, which they failed to comply with given assured time.

(iii) From the records, it is apparent that despite of the assurance extended, the modified repayment plan was never submitted by the Appellants. Further up to this stage, there was no objection from the Appellants that the personal insolvency process is being conducted in the manner of a group insolvency process, which has been developed later as an afterthought at the appellate stage.

(iv) None of the documents that have been brought on record in the minutes of the meetings show that group insolvency resolution process, was ever resorted to, at any point of time and rather the entire ground taken in the appeal by the Appellants, are contrary to the documents placed on record, and as such, if there is a failure on the part of the Appellants to submit their repayment plan despite upon their own request, the rejection of their repayment plan under Section 115 of the I & B Code was quite automatically to follow in accordance with law.

15. Thus, the rejection of the independent Interlocutory Applications denying to accept the repayment plan as submitted without availing an opportunity of its revision in the light of the provision contained under Section 115 of the I & B Code does not suffer from any apparent error calling for an interference by us at this stage, particularly when after the rejection of the repayment plan of the Appellants, the proceedings under Section 123 of the I & B Code has further been proceeded and the corporate guarantors had been declared to be bankrupt by another set of orders that were passed on 18.04.2024, which are the subject matter of challenge in another bunch of appeals, which is to be independently decided. Even otherwise also, in the light of the order passed of declaration of bankruptcy, the instant Company Appeals, which relate to the limited aspect of rejection of the repayment plan, for all practical purposes, lose its cause to be agitated as of now any further. Hence, all these Company Appeals as arising out of the respective orders of 28.06.2023, rejecting the repayment plans, does not call for any interference; the same are accordingly dismissed. All Interlocutory Applications would stand closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

29/10/2025
VG/MS/AK