

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

**CP(IBC)/21/KOB/2023**

*(Under Section 7 of the IBC, 2016)*

***In the matter of Jupiter Leys Private Limited***

**MEMO OF PARTIES:**

**THE IDBI BANK LIMITED,**

IDBI Tower, WTC Complex, Cuffe Parade,  
Mumbai, Maharashtra 400005

**... Petitioner/ Financial Creditor**

**-Vs-**

**JUPITER LEYS PRIVATE LIMITED,**

Door No. XII/343-A, Okkal P.O, Kalady,  
Ernakulam 683550

**... Respondent/Corporate Debtor**

**Order delivered on: 22.12.2023**

***Coram:***

**Hon'ble Member (Technical)**

**Shri. Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**TMT. (Retd.) Justice T Krishna Valli**

***Appearances:***

For the Applicant : Mr. K P Sujesh Kumar, Advocate

For the Respondent : Mr. S Easwaran, Advocate

**ORDER**

**Per Coram**

1. The petitioner has filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the Corporate Debtor, **JUPITER LEYS PRIVATE LIMITED**. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).
2. Part I of the application, sets out the details of the Financial Creditor from which, it is evident that the Financial Creditor is a public sector bank registered under Companies Act, and supervised by the Reserve Bank of India. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number U51225KL2003PTC016656 and having its registered office at Door No. XII/343-A, Okkal P.O, Kalady, Ernakulam 683550. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Ramakrishnan Sadasivan, IBBI Registration Number: IBBI/IPA-001/IP-P00108/2017-18/10215 as the Interim Resolution Professional.
3. Part IV of the application signifies the amount of debt to the tune of Rs. 44,52,67,587.66/- as on 05.05.2023. Part V of the application

describes the particulars of Financial Debt; documents, records and evidence of default as described below:

- 1) Letter of Intent dated 24/09/2009 accepted by M/s Jupiter Leys Private Limited
- 2) Loan-cum-Hypothecation Agreement dated 5/10/2009 executed by Jupiter Leys Private Ltd.
- 3) Letter evidencing deposit of title deeds dated 04/11/2009 executed by T. V. Vijayan
- 4) Declaration cum undertaking dated 03/11/2009 executed by T.V.Vijayan
- 5) Guarantee Agreement dated 5/10/2009 executed by Vinu Sagar and T. V. Vijayan
- 6) Guarantee Undertaking dated 5/10/2009 executed by M/s Jupiter Leys Private Ltd.
- 7) Demand Promissory Note dated 5/10/2009 executed by M/s Jupiter Leys Private Ltd.
- 8) Take Delivery Letter to DPN dated 5/10/2009 executed by Mis Jupiter Leys Private Ltd.
- 9) Letter of intent dated 26/05/2010 and 19/07/2010
- 10) Supplemental Facilities Agreement dated 20/07/2010 executed by M/s Jupiter Leys Private Ltd.
- 11) Supplemental deed of Hypothecation dated 20/07/2010 executed by M/s Jupiter Leys Private Ltd
- 12) Supplemental guarantee agreement dated 20/07/2010 executed by Vinu Sagar and T. V. Vijayan

- 13) Supplemental guarantors undertaking dated 20/07/2010 executed by Vinu Sagar and T.V.Vijayan
- 14) Declaration cum undertaking dated 20/07/2010 executed by T.V.Vijayan
- 15) Declaration cum undertaking dated 20/07/2010 by Vinu Sagar
- 16) Letter evidencing deposit of title deeds dated 21/07/2010 executed by Vinu Sagar and T. V. Vijayan
- 17) Omnibus counter guarantee dated 20/07/2010 executed by M/s Jupiter Leys Private Ltd. through its Managing Director, Vinu Sagar.
- 18) Demand Promissory Note dated 20/07/2010 executed by M/s Jupiter Leys Private Ltd.
- 19) Take delivery letter to DPN dated 20/07/2010 executed by M/s Jupiter Leys Private Ltd.
- 20) Letter evidencing deposit of title deeds dated 21/07/2010 executed by T. V. Vijayan
- 21) Demand Promissory Note dated 22/02/2011 executed by M/s Jupiter Leys Private Ltd. through its Managing Director, Vinu Sagar.
- 22) Take delivery letter to DPN dated 22/02/2011 executed by M/s Jupiter Leys Private Ltd.
- 23) Supplemental deed of hypothecation dated 22/02/2011 executed by M/s Jupiter Leys Private Ltd.
- 24) Supplemental facilities agreement dated 22/02/2011 executed by M/s Jupiter Leys Private Ltd.

- 25) Supplemental guarantee agreement dated 22/02/2011 executed by Vinu Sagar and T. V. Vijayan
- 26) Supplemental guarantors undertaking dated the 22/02/2011 executed by Vinu Sagar and T. V. Vijayan
- 27) Letter evidencing deposit of title deeds dated 23/02/2011 executed by Vinu Sagar
- 28) Letter evidencing deposit of title deeds dated 23/02/2011 executed by T. V. Vijayan
- 29) Declaration cum undertaking dated 22/02/2011 executed by Vinu Sagar
- 30) Declaration cum undertaking dated 22/02/2011 executed by T.V.Vijayan
- 31) Letter of intent dated 21/02/2011, 23/01/2012, 26/03/2013, and 30/09/2014 accepted by M/s Jupiter Leys Private Ltd.
- 32) Demand Promissory note dated 30/09/2014 executed by M/s Jupiter Leys Private Ltd.
- 33) Take delivery Letter to DPN dated 30/09/2014 executed by M/s Jupiter Leys Private Ltd.
- 34) Supplemental deed of hypothecation dated 30/09/2014 executed by M/s Jupiter Leys Private Ltd.
- 35) Supplemental facilities agreement dated 30/09/2014 executed by M/s Jupiter Leys Private Ltd.
- 36) Statement of Loan Accounts of the Corporate Debtor along with certificate under Bankers Book Evidence Act, 1891

- 37) Record of Defaults registered with the NESL (Information Utility) and Report of CIBIL as on 11.05.2023
- 38) Certificate of registration of charge with MCA
- 39) Audited Financial Statements of CD for FY 2020-21, FY 2019-20, FY 2018-19
- 40) Revival Letter dated 31.12.2016
- 41) Request for OTS by CD dated 28.01.2019 and letter of rejection by FC dated 26.02.2019
- 42) OTS Proposal by FC 6.08.2019 and letter of acknowledgement by CD dated 04.01.2020
- 43) Offer for OTS by CD dated 01.08.2022 and letter of rejection of OTS by FC dated 15.09.2022

4. Brief fact of the case is:

- i. The present application is filed by The IDBI Bank Limited, under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, Jupiter Leys Private Limited.
- ii. The Financial Creditor sanctioned a loan facility consisting of Cash credit, Term Loan, packing credit, LER Limit, and Bank guarantee to tune of Rs. 15.5 crores by way of above agreements on 24.09.2009 and 30.09.2014.
- iii. CD created equitable mortgage on properties on 03.11.2009, 20.07.2010, 22.02.2011, and hypothecation over its entire

current assets of CD on 24.09.20019 and 30.09.2014. The CD has also registered charge under Companies Act, 2013. The directors, Mr. Vinu Sagar and Mr. T V Vijayan have executed personal guarantees. The Balance sheet of CD as on 31.03.2019, 31.03.2020 and 31.03.2021 have acknowledged the debt as long-term Borrowings. Revival letters has been executed acknowledging the liability under loan documents and guarantee agreements on 31.12.2016. CD had requested for an OTS on 28.01.2019 which was rejected by FC on 26.02.2019. Further FC provided an OTS on 06.08.2019 which was not accepted by CD. Finally, CD made a proposal for OTS on 01.08.2022 which was rejected by FC.

- iv. It is stated that as on 05.05.2023, CD is in default of Rs. 44,52,67,587.66/- under various loan accounts. The applicant has submitted the default with NESL, information utility. The debt is above the threshold limit of 1 crore under IBC and jurisdiction falls within this Tribunal.
  - v. Since no action to settle the debt has been made by the CD, the FC proceeds under IBC to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
  - vi. The application was filed by the FC on 05.07.2023 and states that he has filed the petition within the period of limitation under the IBC.
5. On the respondent side, takes the contention that the petition is filed without proper authority of the FC and that letter of authority dated 16.05.2023 is not valid. Next the respondent state that

petition is barred by limitation that after the revival letter dated 31.12.2016 wherein debt is acknowledged by CD itself is not a valid document to within scope of section 18 of Limitation Act. Further, there exist no document executed by CD to confirm amount due to FC after 31.12.2016. The date of default as per petition is 26.01.2015. It is further stated that the petitioner has included personal properties of directors of CD as part of application which is incorrect. It is stated that one of the director and officer of CD is deceased and CD is engaged in agricultural activities and processing and presently only meagre amount can be recovered on account of low valuation, hence IBC proceeding is unnecessary.

6. The applicant in their rejoinder states that the petition is filed under authority of the Board of FC as per Annexure 51 and that letter of authority dated 16.05.2023 is valid. It is stated that the loan was declared NPA on 01.07.2015 and the it is the date of default on loan account which is 26.01.2015. It is stated that the Annexure 52 revival letter dated 31.12.2016 wherein debt is clearly acknowledged by CD and petitioner relies on ***Asset Reconstruction Company (India) Limited vs Tulip Star Hotels Limited and others (AIR 2022)*** to state that revival letter after date of classification of NPA is valid to cover limitation. Reliance is placed on ***Asset Reconstruction company (India) Limited vs Bishal Jaiswal and Anr. AIR 2021 SC 5249***, that entry made in Balance sheet of CD amounts to acknowledgement of liability and ***Dena Bank vs C Shivakumar Reddy and Anr(2021)(10) SCC 330***, to state that OTS proposals made within limitation amounts to fresh period of

limitation. In the Audited BS for FY ending FY 2019, 2020, 2021 and 2022, the debt is acknowledged by CD. Further it is stated that petitioner availed SARFAESI and DRT proceedings which are remedies available within statutory period of limitation. Petitioner places the OTS proposals on 28.01.2019, 04.01.2020, 01.08.2022 and letter of rejections by FC dated 26.02.2019, 15.09.2022 in support of acknowledgement of claim by FC.

7. Heard the submissions, and perused the documents placed on record. The debt amounting to Rs. 44,52,67,587.66/- as on 05.05.2023 is beyond the threshold limit stipulated under the IBC, 2016. The only point to be considered in the case which is otherwise complete in all aspects of law is the question of limitation. The date of default of debt by the CD is stated as 26.01.2015 in part (IV) of the petition, which is before the account of CD turned NPA in books of FC which is stated as 01.07.2015. The CD acknowledged the debt by way of revival letter dated 26.12.2016. Further there has been proposal for OTS by both CD and FC which did not materialise. The debt is reflected in the Balance sheet of CD as per Annexure A53, A50 Audited BS as on FY ending 31.03.2019, 31.03.2020 and 03.2021. Hence, going by the dictum laid by Hon'ble Apex Court in ***Asset Reconstruction company (India) Limited vs Bishal Jaiswal and Anr. AIR 2021 SC 5249*** as well as the OTS Proposals, the last of which by CD on 01.08.2022 offers a '5 crore' settlement request to FC, we feel that this petition filed on 05.07.2023, comes well within the period of

limitation under the law for the reason of CD having acknowledged the debt of FC in its Audited Balance sheets.

8. Now, as per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) means any person to whom a Financial Debt is owed and includes a person to whom such debt has been legally assigned or transferred to; thereby, the applicant herein, is a Financial Creditor. From records produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as defined under 5(8) of IBC, 2016. Also, the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution Process with regards to the Corporate Debtor in light of any objections raised by the Corporate Debtor.
9. So, in light of the case's facts, circumstances narrated in the preceding paras, and legal provisions envisaged under the code, we believe that this application, as submitted by the Applicant— Financial Creditor, deserves be admitted under Section 7(5) of the IBC, 2016.
10. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.
  - A. The petition bearing CP (IBC)/23/ KOB /2023, by The IDBI Bank Limited, the Financial Creditor, under section 7 of Insolvency

and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating CIRP against **JUPITER LEYS PRIVATE LIMITED**, (CIN: U51225KL2003PTC016656), the corporate debtor is **ADMITTED**.

- B. There will be a moratorium under section 14 of the Code.
- C. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.
- D. Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.
- E. The Financial Creditor has proposed the name of one **Mr. Ramakrishnan Sadasivan**, IBBI Registration Number: IBBI/IPA-001/IP-P00108/2017-18/10215, email: sadasivanr@gmail.com, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional

actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.

- F. During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.
- G. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- H. The financial creditor shall deposit a sum of Rs.3,00,000/- (Three Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).

- I. In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.
- J. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.
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

**SHYAM BABU  
GAUTAM**  
Digitally signed by SHYAM  
BABU GAUTAM  
Date: 2023.12.22 14:05:43  
+05'30'  
**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

**T.KRISHN  
AVALLI**  
Digitally signed by  
T.KRISHNAVALLI  
Date: 2023.12.22  
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**T KRISHNA VALLI**  
**(MEMBER JUDICIAL)**

Signed on this, the 22<sup>nd</sup> day of December, 2023.