



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/2/KOB/2023

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CP(IBC)/3/KOB/2023

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CP(IBC)/4/KOB/2023

&

CP(IBC)/5/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

Dhanlaxmi Bank Limited Vs. Mr Anil Sebastain;

CP(IBC)/2/KOB/2023

MEMO OF PARTIES:

DHANLAXMI BANK LIMITED, 2nd Floor, Karimpanal Arcade, East Fort,
Thiruvananthapuram – 695 023;

... Petitioner/Financial Creditor

-Versus-

Mr. ANIL SEBASTAIN, Karilombil House, Idamattam P.O, Kottayam- 686 588.

... Respondent/Personal Guarantor

-And-

In the matter of

Dhanlaxmi Bank Limited Vs. Mr. Dinesh Kumar;

CP(IBC)/3/KOB/2023

MEMO OF PARTIES:

DHANLAXMI BANK LIMITED, 2nd Floor, Karimpanal Arcade, East Fort,
Thiruvananthapuram – 695 023.

... Petitioner/Financial Creditor

-Versus-

Mr. DINESH KUMAR, Mazvancheril Thalayar, Kuttoor P.O, Pathanamthitta -
689 106.

... Respondent/Personal Guarantor

-And-



IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/03/KOB/2023

In re: Dhanlaxmi Bank Limited Vs. Mr Anil Sebastian & connected cases

In the matter of

Dhanlaxmi Bank Limited Vs. Mr. Aby P Raj;

CP(IBC)/4/KOB/2023

MEMO OF PARTIES:

DHANLAXMI BANK LIMITED, 2nd Floor, Karimpanal Arcade, East Fort,
Thiruvananthapuram – 695 023;

... Petitioner/Financial Creditor

-Versus-

Mr. ABY P RAJ, Elayil Puthenveedu, Madappally P.O, Changanasserry,
Kottayam - 686 546.

... Respondent/Personal Guarantor

-And-

In the matter of

Dhanlaxmi Bank Limited Vs. Mr. Anil P Raj;

CP(IBC)/5/KOB/2023

MEMO OF PARTIES:

DHANLAXMI BANK LIMITED, 2nd Floor, Karimpanal Arcade, East Fort,
Thiruvananthapuram – 695 023;

... Petitioner/ Financial Creditor

-Versus-

Mr. ANIL P RAJ, Elayil Puthenveedu, Madappally P.O, Changanasserry,
Kottayam - 686 546;

... 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 : Mr. Shameem Ahammed



IN THE NATIONAL COMPANY LAW TRIBUNAL
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CP(IBC)/03/KOB/2023

In re: Dhanlaxmi Bank Limited Vs. Mr Anil Sebastian & connected cases

*(In re Dhanlaxmi Bank Limited Vs.
Mr. Dinesh Kumar)*

**Order reserved on: 12.01.2023,
19.01.2023**

Order pronounced on: 01.03.2023

ORDER

Since common issues and laws are involved in all the above petitions, they have been taken up together and a common order is passed in these cases.

1. These Applications have been filed by the Applicant (Creditor) **Dhanlaxmi Bank Limited** 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 **(i) Mr. Anil Sebastain, (ii) Mr. Dinesh Kumar, (iii) Mr. Aby P Raj, and (iv) Mr. Anil P Raj** who are Personal Guarantors of the Corporate Debtor **Dianby Retailors Pvt Ltd**, for initiating Insolvency Resolution Process.

The brief facts leading to the present applications are as under: -

2. The Corporate Debtor, Dianby Retailors Pvt Ltd, availed cash credit facility for Rs. 40,00,000/- (Rupees Forty Lakhs Only) from the Financial Creditor and apparels vide sanction letter dated 25.06.2010, for running an exclusive an showroom engaged in the business of retail branded and non-branded lifestyle consumer goods, footwear and apparels. CD executed Cash credit agreement, General hypothecation agreement, Demand Promissory note dated 30.06.2010 as required for availing the credit facility. As security for the loan, Mr. Aby P Raj, and Mr. Anil P Raj, directors of the CD mortgaged their personal properties by way of Memorandum of deposit of Title deeds dated 01.07.2010. Subsequently on request of the CD, the Financial Creditor vide sanction letter dated 02.08.2013 granted additional cash credit facility enhancing the loan amount to Rs. 186 lakh along with two other term loans for Rs. 19 lakh and Rs.



20 lakh in support of which the CD executed master credit agreement, demand promissory note, overdraft/cash credit agreement and general hypothecation agreement dated 02.08.2013. The mortgages, Mr. Aby P Raj, and Mr. Anil P Raj, directors of the CD executed a confirmation letter dated 03.08.2013.

3. The Respondents i) Mr. Anil Sebastain, (ii) Mr. Dinesh Kumar, (iii) Mr. Aby P Raj, and (iv) Mr. Anil P Raj executed personal guarantees for the Corporate Debtor in favour of the Financial Creditor *via* deed of guarantee dated 30.06.2010 and 02.08.2013 for availing the aforesaid credit facilities.
4. The accounts of the Corporate Debtor became NPA on 30.09.2015. The Creditor invoked the personal guarantee and issued notice under Section 13(2) of SARFAESI Act dated 04.11.2015 demanding an amount of Rs. 2,02,57,289/-. Further demand notice was issued on 31.03.2016 and possession notice for possession of secured assets on 15.06.2016. FC filed OA before DRT, Ernakulam and a sale notice dated 23.11.2017 was issued which was challenged by the Mortgagers in Securitisation application before DRT, Ernakulam which lies pending. The total amount due as on 08.08.2022 including interest and legal expenses incurred by FC is at Rs.7,32,40,029.53/-.
5. In order to initiate resolution process under Section 95(1) of the Insolvency and Bankruptcy Code, 2016, as a pre-condition demand notice dated 26.09.2022 was issued under Rule 7(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution process of personal guarantor to Corporate Debtor) Rules, 2019. The demand notice was delivered to the Respondents on 30.09.2022. Since, personal guarantors did not make payment or replied to the demand notice even after receiving the notice, the applicant has filed the present application to initiate Corporate Insolvency Resolution Process under Section 95(1) of the Code read with Rule 7(2) of the Rules.



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6. It is stated that the minimum limit for initiating the insolvency resolution of personal guarantors is Rs.1000/- and the liability of the personal guarantors as on 08.08.2022 is Rs.7,32,40,029.53.
7. It is stated that the default was committed on 30.09.2015 when CD defaulted the payment of debt and account became NPA. The acknowledgement of debt was made by the CD *vide* letters dated 23.04.2016, 06.02.2017, and 09.03.2018 to the FC requesting OTS. However, the last proposal for OTS was rejected by the FC *vide* letter dated 12.03.2018. The applicant further states that honourable Supreme Court in *Suo Moto* WPC 3 of 2020 has excluded the period from 15.03.2020 till 28.02.2022 for the purpose of any limitation.
8. For the aforesaid reasons, the present applications have been filed by the Creditor to initiate Corporate Insolvency Resolution Process against the personal guarantors of the Corporate Debtor under Section 95(1) of Insolvency and Bankruptcy Code, 2016.
9. All these Applications are filed through Mr. Jasin Jose, Insolvency Resolution Professional having Registration No: IBBI/IPA-001/IP-P00695/2017-18/11225, office at Ponmattam Madaserry House, Mookkannoor PO,Ernakulam,Kerala ,683577 and his declaration has been filed along with these applications. The IP has submitted his authorisation for assignment from IIP of ICAI dated 29.11.2022 and his certificate of registration *vide* annexure A24 of the application.
10. We have heard learned counsel for the Applicant and the learned counsel for the Respondent/Personal Guarantor in CP(IBC)/2 to 5/KOB/2023 and have perused the whole case records including the documents appended herewith.
11. In this connection it is profitable to quote Section 95 of I&B Code,2016: -

***“95. (1) A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.*”**



(2) A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against—

(a) any one or more partners of the firm; or

(b) the firm.

(3) Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.

(4) An application under sub-section (1) shall be accompanied with details and documents relating to—

(a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;

(b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and

(c) relevant evidence of such default or non-repayment of debt.

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified.

12. In view of the above provisions and that the applicant has complied with Section 95(4) quoted above, that the demand notices dated 26.09.2022 have



been received by the Respondents/Personal Guarantors on 30.09.2022 and that the Respondents/Personal Guarantors failed to make the payment, we have come to the conclusion that there is a default on the part of the Respondents/Personal Guarantors 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 which is apparent from the documents placed on record. It is also satisfied that the debts in default is above the threshold limit prescribed under IBC and the application is filed within the limitation period. Even though the CIRP has not been initiated against the corporate debtor, Dianby Retailors Pvt Ltd, in view of the decision of Supreme Court in *Mahendra Kumar Jajodia v. State Bank of India*, RP can initiate proceedings against the Personal Guarantors regardless of whether a CIRP has been initiated against the CD. Hence, this Tribunal ordered as under: -

ORDER

These applications 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 Dhanlaxmi Bank Ltd., against Personal Guarantors of the Corporate Debtor M/s. Dianby Retailors Pvt Ltd., **(i) Mr. Anil Sebastain, (ii) Mr. Dinesh Kumar, (iii) Mr. Aby P Raj, and (iv) Mr. Anil P Raj**, are allowed with the following directions: -

- I. The interim-moratorium under Section 96(1) (a) of the Insolvency and Bankruptcy Code, 2016 has commenced on the date of filing of these applications by the Creditor in relation to all the debts and will cease to have effect on the date of admission.
- II. During such interim-moratorium period-
 - (a) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and



(b) 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. Jasin Jose**, Insolvency Resolution Professional having Registration No: IBBI/IPA-001/IP-P00695/2017-18/11225, office at Ponmattam Madaserry House, Mookkannoor PO, Ernakulam, Kerala, 683577, he is appointed as the Resolution Professional, to carry out functions as mentioned under the Insolvency and Bankruptcy Code, 2016. 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. That this Bench also directs that an advance payment of Rs.2,00,000 (Rupees Two Lakhs only) to be paid by the Applicant/Creditor to the Resolution Professional (RP) 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 exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. He is directed to make the recommendations with reasons in writing for acceptance or rejection of this Application within ten days from the date of receipt of this order, as envisaged under the provisions of Section 99 of the Code. 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.
- VI. The Registry is directed to immediately communicate this order to the Creditor, Personal Guarantors, Corporate Debtor and the Resolution Professional by way of email. The Registry shall place a compliance report of this direction in this file.



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VII. List the above IBAs for further proceedings on. 12.04.2023.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.03.01 15:38:20 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.03.01 15:05:00
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MOHAN RAJ

P. Mohan Raj
Member (Judicial)

Signed on this the 01st day of March, 2023.

Rohit