



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

CP (IBC)/26/KOB/2024

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CP (IBC)/27/KOB/2024

(Under Section 94 of the IBC 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules 2019)

CP (IBC)/26/KOB/2024

In the matter of: Elsa Tenny

MEMO OF PARTIES:

Mrs. Elsa Tenny

White Mansion, Chirammel House, Museum
Cross Lane, Chembukkavu, Thrissur 680
020

... Petitioner/Personal Guarantor

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CP (IBC)/27/KOB/2024

In the matter of: Arun Tenny

MEMO OF PARTIES:

Mr. Arun Tenny

White Mansion, Chirammel House, Museum
Cross Lane, Chembukkavu, Thrissur 680
020

... Petitioner/Personal Guarantor

Order delivered on: 27.05.2025



Coram:

Smt. Madhu Sinha

Shri. Vinay Goel

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Petitioner : Ms. Dharmya M S, Advocate

ORDER


Per Coram

1. The Personal Guarantors have filed these two Petitions, each offering personal guarantees for the same debt of the same Corporate Debtor. Given that the legal and factual issues in these cases are identical, they have been heard together, and a common order is being passed.
2. These Petitions number CP(IBC)/26/KOB/2024 and CP(IBC)/27/KOB/2025 have been filed under Section 94(1) of the Insolvency & Bankruptcy Code, 2016 (hereinafter 'the Code'), read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The relief sought is to initiate an Insolvency Resolution Process (hereinafter referred to as the IR Process") against the Personal Guarantors of M/s. Tenny Jose Limited (Corporate Debtor) for the default amount of Rs. 73,77,18,785.56/- (Rupees Seventy-Three Crore Seventy-



Seven Lakh Eighteen Thousand Seven Hundred Eighty-Five Rupees and Fifty-Six Paise Only) in respect of credit facility availed from the various Banks.

3. The salient facts of the case are as follows:
 - i. The Petitioners are among the Personal Guarantors, promoted M/s. Tenny Jose Limited, a family-owned, closely held public company incorporated on 11.10.2011. The company operated in paper products, building materials, roofing structures, and steel, and qualifies as an MSME under the Micro, Small and Medium Enterprises Development Act, 2006. It availed working capital loans from the State Bank of India (SBI) and South Indian Bank (SIB), with facilities renewed annually. The Petitioners and their family provided personal guarantees and mortgaged their assets, while M/s Steel House Pvt. Ltd., another promoter-owned company, gave a corporate guarantee.
 - ii. It is stated that the financial troubles of the Corporate Debtor began in November 2018 after the Government of India imposed an anti-dumping duty on copier paper imports from ASEAN countries. Before this, the company had expanded its operations nationwide in partnership with Asia Pulp and Paper-Indonesia, committing significant capital based on strong sales in South India. The sudden duty disrupted imports and halted growth. The situation worsened during the COVID-19 pandemic, as paper demand fell sharply due to office and school



closures. This led to halted imports, heavy detention and demurrage charges, and major losses, pushing the company into a severe financial crisis.

- iii. The loan accounts of the Corporate Debtor were declared as NPA by SBI on 28.06.2021 and by SIB on 23.02.2021.
 - iv. An operational creditor of the Corporate Debtor, M/s Korea Trade Insurance Corporation, initiated proceedings under Section 9 of the Code to commence the Corporate Insolvency Resolution Process (CIRP) before this Tribunal. This Tribunal admitted the Corporate Debtor into CIRP on 21.12.2021 and subsequently ordered its dissolution on 31.10.2023.
4. On presentation of the Petitions, this Adjudicating Authority vide order dated 07.08.2024 appointed Mr. C J Davis, having Registration Number: IBBI/IPA-003/ICAI-N00343/2021-2022/13660 as Resolution Professional, directing him to file a report under Section 99 of the Code.
 5. The Resolution Professional submitted reports dated 17.08.2024 as IA(IBC)/394/KOB/2024 in CP(IBC)/26/KOB/2024 and IA(IBC)/395/KOB/2024 in CP(IBC)/27/KOB/2024, under Section 99 of the Code. These reports recommended the admission of the Company Petitions filed under Section 94(1) of the Code, read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.




6. It is stated in the report that the Resolution Professional issued intimation letters by registered post and email to the Financial Creditors, State Bank of India, and South Indian Bank, as well as to the Personal Guarantors. The letters dated 07.08.2024 and 08.08.2024 were duly dispatched, and responses were subsequently received from the creditors. The Personal Guarantors also replied on 16.08.2024, expressing their inability to pay the advance amount of Rs. 3,00,000 as directed by this Tribunal, citing financial constraints and inability to bear the cost of the Resolution Professional. Upon review of all responses, financial records, and documents submitted, the Resolution Professional verified that the conditions under Section 94 of the Code are duly met. Accordingly, the Resolution Professional finds the application to comply with the provisions of Section 94 read with Rule 6(1), and recommends that it is a fit case for admission.
7. The State Bank of India (SBI) submits that the application is a mala fide attempt to misuse the provisions of the Code to obstruct legitimate recovery proceedings and escape liability for fraudulent activities. It is submitted that both the South Indian Bank and the SBI have classified the accounts of the Corporate Debtor as fraudulent. South Indian Bank classified the account as fraud on 27.08.2021 and filed an FIR. Similarly, SBI declared the account as fraudulent through its Fraud Identification Committee on 22.10.2021 and filed a complaint with the Central Bureau of Investigation on 06.08.2022. Although the classification was later reversed following an interim order of the Hon'ble High Court of



Kerala and subsequently the Hon'ble Supreme Court decisions, the complaint documents substantiate that the Petitioners and other directors caused a wrongful loss of Rs. 27.59 crores to the bank.

8. It is further submitted that a forensic audit conducted by the Liquidator confirmed that the Petitioners and other directors siphoned off funds from the Corporate Debtor. Based on the forensic report, applications under Sections 66, 43, 44, and 50 of the Code were filed, and this Tribunal has already held the transactions to be fraudulent and preferential. This Tribunal directed the erstwhile management, including Mr. Tenny Jose, Mrs. Elsa Tenny, Arun C. Tenny, and Kiran C. Tenny, to return the funds siphoned off from the Company within 30 days. In IA(IBC)/204/KOB/2022, the Petitioners were directed to pay Rs. 3,08,00,000/- but this amount has not been disclosed in the current Petition for initiating the resolution process, and has yet to be paid. The Petitioners also filed Company Appeal AT(CH)(INS) 95 of 2023 challenging this order, which was subsequently dismissed by the Hon'ble NCLAT. The SBI has filed Contempt Petitions (IBC)/1/KOB/2024 for non-compliance, with a charge framed by this Tribunal on 03.10.2024.
9. It is further stated that the Liquidator has received claims totalling Rs. 96,81,54,753.60/-, with SBI's admitted claim amounting to ₹35.75 crores. Although the loan was backed by a corporate guarantee and mortgage of land valued at only Rs. 6.21 crores, repeated attempts to sell the asset through auction have failed. It has been revealed that the Petitioners and other directors



established multiple foreign and domestic subsidiary companies during 2018–2020, allegedly to divert funds. These include companies such as Tenny Jose USA Inc., Tenny Jose Singapore PTE Ltd., Tenny Jose International LLC in Dubai, and several Indian entities. Notably, the company now known as Future Ventures Pvt. Ltd., in which the Petitioners are directors and shareholders, reported a turnover of ₹69.29 crores. The Resolution Professional has confirmed that, as of the insolvency commencement date, i.e., 21.12.2021, the Corporate Debtor had no assets, apart from a minimal recovery of ₹7.73 lakhs, indicating a complete stripping of assets.

10. The SBI asserts that the present petitions under Section 94 have been filed with the sole intention of shielding the Petitioners from the consequences of their fraudulent acts and to halt proceedings initiated by the financial institutions. It is submitted that the Petitioners have not disclosed their financial interests and investments in Indian and foreign entities in their Petition. Despite claiming to have no means, the Petitioners and their family members have sought and obtained permission from courts to travel abroad, which contradicts their claim of insolvency. Orders of the Hon'ble High Court in pending writ and contempt proceedings further support the SBI's contention that the Petitions are acting with ulterior motives.

11. The SBI has relied upon the Hon'ble Supreme Court, in ***Saranga Anilkumar Aggarwal v. Bhavesh Dhirajlal Sheth and Ors. (2024 LiveLaw (SC) 284***), held that the objective of the Code is to provide



a mechanism for resolving financial distress, not to shield individuals from statutory liabilities. The Court emphasized that insolvency proceedings cannot be invoked to evade obligations arising from regulatory statutes, such as consumer welfare penalties. Staying such penalties would be contrary to public policy, as the enforcement of consumer rights is a legislative priority.

12. The Petitioner in CP (IBC)/26/KOB/2024 has filed a reply to the RP report and stated that the Petitioner is a senior citizen and homemaker, unemployed with no source of income due to physical ailments that prevent her from obtaining employment. She has no readily realisable assets as all properties, including her residential home, were mortgaged to banks for credit facilities of the Corporate Debtor and subsequently taken over by creditors under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Petitioner is currently living in a rented apartment, with expenses met by her family members and relatives. Given these financial difficulties, the Petitioner does not have the means to comply with this Tribunal's order to pay the fee to the Resolution Professional. Therefore, it is requested that the fee be adjusted from the proceeds of the bankruptcy estate, and this Tribunal excuses the Petitioner from paying the fee due to her inability to do so.
13. The Petitioner in CP (IBC)/27/KOB/2024 has filed a reply to the RP report and stated that the Petitioner does not have any immovable properties or assets to realise for making the payment



of the Resolution Professional's fee as directed by this Tribunal. While the Resolution Professional's report incorrectly refers to the Petitioner as the managing director of Axis Global LLC, Dubai, UAE, the Petitioner is only an employee holding the position of manager and earns a fixed salary. As the sole earning member of his family, the Petitioner is responsible for supporting his wife and child, covering their day-to-day expenses, and even funding his child's education. Despite his salary, the Petitioner is struggling to make ends meet. Given these financial constraints, the Petitioner does not have sufficient means to comply with this Tribunal's order to pay the Resolution Professional's fee, and it is requested that the fee be adjusted from the proceeds of the bankruptcy estate or the creditors. Therefore, it is submitted that this Tribunal consider the financial difficulties faced by the Petitioner and excuse him from the payment of the fee.

14. The Petitioner in CP(IBC)/26/KOB/2024 has filed a reply to the submissions made by SBI, and the Petitioner in CP(IBC)/27/KOB/2024 has filed a memo adopting the reply filed by the Petitioner in CP(IBC)/26/KOB/2024.

15. On behalf of the Petitioners, it has been argued that the petitions strictly follow the provisions of the Code and that there is no legal provision permitting the Financial Creditor to file a reply or intervene in this Personal Guarantor's insolvency process. Therefore, SBI's response lacks legal standing and should be disregarded entirely.



16. The Petitioners stated that several investigations, including those by the local police, SFIO, and CBI, have found no evidence supporting the fraud allegations. An FIR filed by South Indian Bank was followed by a police investigation, which resulted in a Final Report stating no offence had been committed. Similarly, complaints made to the SFIO and CBI yielded no adverse findings. The forensic audit conducted by the Resolution Professional also did not detect any transactions made with the intent to defraud creditors. SBI has not objected to these findings at any stage.
17. The bank's claims that the Petitioners hold foreign investments or are evading recovery are factually incorrect and unsupported. The companies mentioned in the bank's reply have ceased operations, and there is no proof of current ownership or benefit derived by the Petitioners.
18. The Petitioners point out the inconsistency in SBI's conduct, noting that it did not raise similar objections in the Personal Guarantor Insolvency Resolution Process of Mr. Tenny Jose, the co-guarantor for the same debt, which has already been admitted. This selective objection by SBI is presented as a malicious attempt to hinder the Petition's legitimate use of the statutory mechanism for insolvency resolution. The Petitioners assert that SBI is misrepresenting facts and suppressing critical evidence to discredit a lawful and genuine insolvency application.



19. We have carefully heard the submissions made by the Learned Counsel for the Petitioners, Learned Counsel Mr. Vinod P V for the State Bank of India, and perused the documents placed on record.
20. At the outset, we must record that the Insolvency and Bankruptcy Code, 2016, is a tool for genuine insolvency resolution and not a shield to escape liabilities arising from fraudulent conduct.
21. The Petitioners have given a history of loan and default selectively. It is noted that the Petitioners have wilfully suppressed material facts from this Tribunal, particularly the existence of pending contempt proceedings and the prior adjudication under Section 66 of the Code. This Tribunal vide order dated 25.01.2023 in IA(IBC)/204/KOB/2022 directed the Petitioners to repay Rs. 3.08 crores after concluding that they had fraudulently siphoned off funds from the Corporate Debtor. This order attained finality following the dismissal of their appeal by the Hon'ble NCLAT.
22. Despite the existence of these serious findings, the Petitioners have failed to disclose either the adverse order passed in IA(IBC)/204/KOB/2022 or the fact that Contempt Petition (IBC)/1/KOB/2024 is currently pending before this Tribunal. Such deliberate non-disclosure amounts to abuse of judicial process and is sufficient, by itself, to warrant outright rejection of the petitions.
23. We are equally concerned that the failure of the Resolution Professional to bring these crucial facts to the notice of this Tribunal. The role of the Resolution Professional, under Section 99 of the Code, is not merely administrative but also investigative in



nature. The Resolution Professional is obligated to independently assess the financial conduct of the debtor and report all material facts that bear upon the fitness of the Petitions under Section 94.

24. The Resolution Professional's omission to highlight the earlier findings of fraud, the pending contempt proceedings, and the Petitioners' continued default on a binding repayment order reflects a serious lapse in duty. Such a dereliction undermines the integrity of the insolvency process and calls into question the credibility of the Resolution Professional's recommendation. This Tribunal records its dissatisfaction with the conduct of the Resolution Professional and expects strict compliance with statutory obligations in future assignments.

25. It is stated by the Petitioners that the Petitioner in CP(IBC)/27/KOB/2024 is working abroad in a managerial position, and the Petitioner's mother, who is the Petitioner in CP (IBC)/26/KOB/2024, is not able to pay the Resolution Professional's fee. Given that the Petitioner's overseas employment and being associated with offshore entities, and the available family support indicate sufficient financial resources, their assertions of inadequate funds appear to be unsubstantiated.

26. The Hon'ble High Court of Kerala has even allowed the Petitioners' family members to travel abroad, which is inconsistent with a claim of complete insolvency. Such conduct contradicts the assertions of lacking means and supports the claim of the Financial Creditors that these petitions are not filed in good faith.




27. In the matter of the Personal Guarantor, Mr. Tenny Jose, it is pertinent to note that crucial facts, particularly the order passed under Section 66 of the Code and other significant material facts, were not brought to the forefront of this Tribunal's attention. Both the Petitioner and the Resolution Professional failed to disclose these critical aspects. Specifically, the Petitioners were to repay Rs. 3.08 crores, after concluding that they had fraudulently siphoned off funds from the Corporate Debtor. The non-disclosure of such material facts, including the findings of fraudulent conduct, constitutes a serious lapse and undermines the integrity of the insolvency process. These omissions were not adequately reported by the Resolution Professional, who is statutorily bound to investigate and present all relevant facts. So, any decision made by this Tribunal in that case would not be a guiding force in these matters. The reliance on the decision of Mr. Tenny Jose is misplaced.

28. The deliberate failure to disclose these facts is a breach of judicial process and calls into question the bona fides of the petitions filed. So, we can say that the Petitioners have not come to us with clean hands.

29. At this juncture, we can rely upon the judgment of the Hon'ble Supreme Court in ***HMT Ltd. v. Smt. Rukmini and Ors. (2024 INSC 728)*** wherein the Apex Court held that: -


12. In K.D. Sharma vs. Steel Authority of India Limited and others, this Court observed that the jurisdiction of the High



*Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and the prerogative Writs mentioned therein are issued for doing substantial justice. **This Court, therefore, held that it would be of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek appropriate relief. It was further held that if there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition should be dismissed at the threshold without considering the merits of the claim.** The aforesaid principle would apply on all fours to the case on hand, given the clear lack of bonafides on the part of the respondents/writ petitioners, as is demonstrable from their deliberate suppression of relevant particulars, which were adverse to the claim that they sought to project in their writ petition. The filing of the writ petition was, therefore, nothing short of an abuse of process and did not warrant examination on merits. They were liable to be non-suited on this short ground.*

30. We also rely upon the judgment of the Hon'ble Supreme Court in the case of ***V. Chandrasekaran v. Administrative Officer*** reported in **2012(4) R.C.R.(Civil) 588** wherein the Apex Court held that: -


34. The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a Court of Equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach



*the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim "Jure Naturae Aequum Est Neminem cum Alterius Detrimento Et Injuria Fieri Locupletiolem", means that it is a law of nature that one should not be enriched by causing loss or injury to another. (Vide: **The Ramjas Foundation & Ors. v. Union of India & Ors., AIR 1993 SC 852; Nooruddin v. (Dr.) K.L. Anand, 1995(2) R.R.R. 556: (1995) 1 SCC 242; and Ramniklal N. Bhutta & Anr. v. State of Maharashtra & Ors., AIR 1997 SC 1236).***

35. The judicial process cannot become an instrument of oppression or abuse, or a means in the process of the court to subvert justice, for the reason that the court exercises its jurisdiction, only in furtherance of justice. The interests of justice and public interest coalesce, and therefore, they are very often one and the same. A petition or an affidavit containing a misleading and/or an inaccurate statement, only to achieve an ulterior purpose, amounts to an abuse of process of the court.

*36. In **Dalip Singh v. State of U.P. & Ors., (2010) 2 SCC 114**, this Court noticed an altogether new creed of litigants, that is, dishonest litigants and went on to strongly deprecate their conduct by observing that, the truth constitutes an integral part of the justice delivery system. The quest for personal gain has become so intense that those involved in litigation do not hesitate to seek shelter of falsehood, misrepresentation and suppression of facts in the course of court proceedings. A litigant who attempts to pollute the stream of justice, or who touches*



the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

*37. The truth should be the guiding star in the entire judicial process. "Every trial is a voyage of discovery in which truth is the quest". An action at law is not a game of chess, therefore, a litigant cannot prevaricate and take inconsistent positions. It is one of those fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings. (Vide: **Ritesh Tewari & Anr. v. State of Uttar Pradesh & Ors., (2010) 10 SCC 677; and Amar Singh v. Union of India, 2011(5) R.C.R.(Civil) 386: (2011) 7 SCC 69**).*

31. The Petitioners have failed to disclose critical and material information regarding the diversion of the siphoned funds from the Corporate Debtor. Despite the clear findings of fraudulent conduct, including the siphoning of funds, no information has been provided as to where and how these funds were diverted or misappropriated. This omission is not only a significant lapse but also a deliberate attempt to conceal the true financial dealings of the Corporate Debtor and the Petitioners' involvement in the fraudulent activities. Given the undisclosed findings in the earlier order under Section 66 of the Code, which conclusively established that the Petitioners were responsible for causing wrongful losses to the Corporate Debtor, and the failure to reveal the pending contempt proceedings arising out of non-compliance with this Tribunal's previous orders, it becomes evident that these Petitions are not being made in good faith.



32. The Petitioners' actions amount to a clear abuse of the insolvency process, initiated primarily with the intent to evade the legal consequences of their fraudulent conduct. By deliberately omitting material facts, they have not only compromised the integrity of the insolvency process but have also demonstrated a clear attempt to misuse the statutory provisions of the Code as a shield to escape responsibility for their wrongful actions. This deliberate concealment of crucial information reflects an intention to manipulate the system and avoid accountability for the financial misconduct committed, undermining the very purpose of the Code, which is to provide a transparent and fair mechanism for addressing financial distress. Such conduct is contrary to the principles of justice and equity.
33. It is our firm opinion that these Petitions were filed in a manner that constitutes an abuse of the process and not for the legitimate purpose of seeking insolvency resolution. Such conduct undermines the very objective of the Code, which is to provide a fair and transparent mechanism for resolving financial distress, rather than providing a platform for individuals to evade their legal and financial responsibilities.
34. In view of the foregoing findings and observations, these Petitions, **CP(IBC)/26/KOB/2024** and **CP(IBC)/27/KOB/2024**, are hereby **dismissed** and **disposed of** accordingly.



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35. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and to take necessary steps.
36. Let the certified copy of the order be issued upon compliance with the requisite formalities.
37. File be consigned to records.

SD/-
MADHU SINHA
(MEMBER TECHNICAL)

SD/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 27th day of May 2025.

Adarsh M Nair.