

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

**IA (IBC)/108/KOB/2022
IN
CP (IB)/23/KOB/2022
&
CP (IBC)/23/KOB/2022**

*(Under Section 95(1) Of Insolvency and Bankruptcy Code, 2016 read with
Rule 7(2) Of Insolvency and Bankruptcy (Application to Adjudicating
Authority for Insolvency Resolution Process for Personal Guarantors to
Corporate Debtors) Rules, 2019)*

***In the matter of:*
IA (IBC)/108/KOB/2022**

Dr. Ashalatha Nair, Aughraha, 28 Chambakassery Nagar, Kesavadasapuram,
Thiruvananthapuram- 695 004;

... Applicant

-Versus-

1. Dhanalaxmi Bank Ltd., 2nd Floor, Karimpanal Arcade, East Fort,
Thiruvananthapuram- 695 023;
2. Rajmohan R., Resolution Professional, Rajbhavan, H S 514/12/land 175A,
Krishnapuram, 6th Street, Ollukkara P.O., Krishnapuram Temple, Thrissur,
Kerala- 680 655;

... Respondents

***In the matter of:*
CP (IBC)/23/KOB/2022**

Dhanalaxmi Bank Ltd., 2nd Floor, Karimpanal Arcade, Esat Fort,
Thiruvananthapuram- 695 023;

...Applicant /Creditor

-Versus-

Dr. Ashalatha Nair, Aughraha, 28 Chambakassery Nagar, Kesavadasapuram,
Thiruvananthapuram.

... Personal Guarantor/Respondent

Coram:

Shri. P. Mohan Raj : Member (Judicial)

Shri. Satya Ranjan Prasad : Member (Technical)

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA (IBC)/108/KOB/2022
IN CP (IBC)/23/KOB/2022
&
CP (IBC)/23/KOB/2022

In re: Dhanalaxmi Bank Ltd. Vs. Dr. Ashalatha Nair

Parties/ Counsel present (through video conference)

For IA(IBC)/108/KOB/2022

For Applicant : Mr.. Harikumar G. Nair,
Mr. Akhil Suresh,
Mrs. Anu Balakrishnan Nambiar,
Advocates.

For Respondent No.1 : M/s. Indialaw LLP, Advocates.

For Respondent No.2 : Mr. Sankar P. Panicker, Advocate.

For CP (IBC)/23/KOB/2022

For Applicant : M/s. Indialaw LLP, Advocates

For Resolution Professional : Mr. Sankar P. Panicker

For Respondent : Mr. Harikumar G. Nair,
Mr. Akhil Suresh,
Mrs. Anu Balakrishnan Nambiar,
Advocates.

Order reserved on: 09.11.2022
Order pronounced on: 22.12.2022

ORDER

IA (IBC)/108/KOB/2022

1. The present application is filed by the Personal Guarantor of M/s. Trivandrum International Health Services Limited, under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 seeking a declaration that the Company Petition No. CP(IBC)/23/KOB/2022 filed under Section 95(1) of Insolvency and Bankruptcy Code, 2016 is not maintainable/ in the alternative direct the 2nd Respondent to examine the application filed under Section 95(1) of the 1&B Code in the light of Section 133 and 141

of the Indian Contract Act, 1872 by exercising powers under Section 99(4) and 99(5) of the Insolvency and Bankruptcy Code, 2016.

2. The facts as narrated in the application and explained by the Applicant are summarized hereunder:

- i. M/s. Trivandrum International Health Services Limited obtained credit facilities from the 1st Respondent to which the Applicant herein executed a Deed of Guarantee on the strength of the collateral security provided by M/s. Trivandrum International Health Services Limited. Vide amendment letter dated 25.05.2015, the sanction letter dated 30.03.2015 issued by the 1st Respondent was amended whereby the applicant creditor has given approval for excluding 80 Cents of land with building housing oncology block (5/10th share over I Acre 60(80) (Cents in Re.sy.no. 588/23) of Ulloor village, Trivandrum Taluk) leased to the Corporate Debtor. The 1st Respondent has created paripassu charge only on the 'leasehold' whereas the application Form C while disclosing the Secured Debt including particulars of security held (6(d) in PART III) states that there is a paripassu charge on the equitable mortgage. Vide amendment letter dated 08.07.2015, the sanction letter dated 30.03.2015 was further amended whereby the 1st Respondent/Creditor had given approval for release of the sanctioned limit with modification in the total extent of land under paripassu coverage from the existing extent of 106.25 cents to 104.84 cents in Ulloor Village, Trivandrum Taluk and District with coverage of 52.81% on DSV. The committee also approved the change in the exclusive collateral cover from the existing 9.80 cents in the name of Corporate Debtor to 3.953 cents of land u/s 592/7, Ulloor Village, Trivandrum Taluk and District in the name of Dr. K N Pai Heart Foundation.

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- ii. The Applicant stated that the aforesaid amendments were done without intimating the surety or obtaining her prior consent as such she is discharged of such subsequent transaction in terms of Section 133 of the Contract Act. Hence, the Company Petition which is filed by the 1st Respondent for repayment of amounts payable pursuant to the Sanction letter dated 30.03.2015 is not maintainable.
- iii. The 2nd Respondent vide his letter dated 07.05.2022 requested the Applicant to show evidence of repayment in terms of Section 99(2) of the I&B Code but however, failed to comply with his obligation under Section 99(1). The 2nd Respondent is bound to 'examine' an application filed under Section 95 before requesting the applicant herein to show evidence of repayment in terms of Section 99(2). Hence the Company Petition No. CP(IB)/23/KOB/20232 filed based on incorrect liability and the Deed of Guarantee is not maintainable.
- iv. The Applicant had referred to the decision of Hon'ble NCLAT in *Dr. Vishnu Kumar Agarwal Vs. Piramal Enterprises Ltd. (2019 SCC Online NCLAT 542)*, (Piramal) wherein the Hon'ble Court held that once a claim filed by a creditor under Section 7 of the Code is admitted as against the corporate debtor or the personal guarantor as the case may be no proceedings for the same set of claims may be initiated against the other. The Applicant herein submits that the respondent creditor herein is now proceeding to invoke personal insolvency against 3 personal guarantors of the Corporate Debtor for a sum of Rs. 16,00,00,000/- from each of them. This according to the Applicant gives a free hand to the applicant to recover sums which are far more than what they are entitled. The Applicant further stated that according to the amendment to the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016, there is a prerequisite and mandate of law that a copy of the application has to be filed/served on the Insolvency and Bankruptcy Board of India.

3. The 1st Respondent filed a reply opposing the prayers stating that the submissions of the Applicant that there is variance of the contract and Applicant to be discharged to the extent of subsequent variance under Section 133 of the Contract Act and further states that if the creditor losses or without the consent of the security parts with the security, the surety is discharged to the extent of the value of security under Section 141 of the Contract Act and that none of those contentions raised by the Applicant are maintainable as the same is done with the request of the Corporate Debtor, in which the Applicant herein is a director, to rectify certain error committed by the Corporate Debtor itself and also the actual extent as per possession certificate. Even otherwise, it is submitted that the guarantor has executed the guarantee in addition to and irrespective of any security already provided to the Bank under the sanction letters. Under Clause 11 of the Guarantee Agreement, the guarantor has consented to the Bank to make any change or variation in the security or any loan documents Without notice of written consent from the Guarantor. Clause 1 1 read as under:-

“11. Bank shall have full discretionary power with or without reference or notice or consent of the Guarantors to grant time or other indulgences to or accept or make any composition or arrangement with the Borrower or any persons or persons liable in respect of any indebtedness or liability hereby guaranteed and also vary abstain from, exchange, renew, discharge, release, enforce and deal with the whole and in part and from time to time any bills, notice, mortgages, charges, liens or any securities, obligations or decrees now or hereafter held by the Bank in respect thereof

and generally to treat the Guarantors as primarily and severally liable along with the Borrower”

4. It is stated that the Applicant has consented to the Bank to make any variance in the contract as it may deem with the Borrower including parting with the security and Guarantor has also waived their right under Section 133, 134, 135, 139 and 141 of the Indian Contract Act, 1872 under Clause 14 of the Deed of Guarantee. It is further stated that irrespective of any security documents, the applicant has agreed under Clause 18 of the Deed of Guarantee to assume the liabilities of the Borrower, which is reflecting in the Bank’s Book of Account and such account statement shall be binding on the Guarantors as conclusive proof of debt to initiate proceeding against Guarantor with respect to the debt. Regarding the contention of the Applicant that the application is defective and is in violation of Section 95(4) of IBC, 2016, the 1st Respondent states that the 80 Cents of Land is covered under Lease Deed No.2456 of 2010 in the name of Corporate Debtor and equitable mortgage of the said property is created with SBT and Respondent has paripassu charge with SBI and Kerala Financial Corporation. Regarding the contention that the Creditor has given approval for excluding 80 cents of land, the Respondent stated that in the letter dated 25.05.2015 issued by the Central Credit Sanction Department to the Branch Manager stating that the property is excluded from calculating collateral coverage since the property is a lease hold property. However, the said letter itself clarifies that bank has to create paripassu charge on the leasehold rights in the said property as done by other banks. Therefore, there is no exclusion of the property as stated by the Applicant. The Respondent has referred to the decision of the Hon’ble NCLAT in *Sandeep Garg, Director, M/s. Abloom Infotech Pvt Ltd Vs. M/s.DMI Finance Limited (Company Appeal (AT) (Ins) 321 of 2021 relevant*

Paras at Paras 30-38) in which it is held that the simultaneous proceeding is possible against the Corporate Debtor and Personal Guarantor who has stood surety through a valid deed of guarantee unless and until the guarantor is discharged from the liability each and every guarantor is jointly and severally liable for the amount guaranteed under the Deed of Guarantee.

5. In the reply statement filed by the 2nd Respondent, the 2nd Respondent has reiterated most of the contentions raised by the 1st Respondent. It is further stated that the Applicant has consented to the Bank to make any variance on the contract as it may deem fit with the Borrower including parting with the security and Guarantor has also waived their right under Section 133, 134, 135, 139 and 141 of the Indian Contract Act, 1872 under Clause 14 of the Deed of Guarantee. In the amendment letter dated 25.05.2022, the bank has excluded the leased property (5/10th share of 1 acre 60(80) cents in Re survey no.588/6(588/23) of Ulloor Village, Trivandrum Taluk) from calculating the collateral coverage and not excluded from the paripasu charge on the said leasehold rights in the said property.
6. The Corporate Debtor and the Applicant herein are the real beneficiaries of the said amendment and the averment made by the Applicant will not hold water as the Applicant has consented to variations as mentioned in Clause 11 and 14 of the Deed of Guarantee. This Respondent has submitted his report to this Tribunal based on the account statement of the Corporate Debtor in the books of R1 as produced before him by the 1st Respondent. Therefore, the applicant is estopped from challenging a clause in the deed of Guarantee, which has been already agreed upon by her.
7. The 2nd Respondent has referred to the decision of Hon'ble Supreme Court in *Lalit Kumar Jain Vs Union of India and others* (Transferred case

(Civil) No. 245/2020) the Hon'ble Supreme Court in which it is stated that the liability of the Guarantor is coextensive with the debtor. In *Mahendra Kumar Jajodia Vs. State Bank of India*, (Civil Appeal No. 1871/2022) has upheld that the application under Section 95(1) will be maintainable under Section 60(1) even in the absence of a Corporate Insolvency Resolution Process (CIRP) or liquidation process in Corporate Debtor. This essentially proves that the requirement of crystallisation of liability under CIRP or Liquidation is not necessary for filing an application under 95(1) of the Code. Therefore, the settled position is that till the time, the Lender (R1 herein) has discharged the liability of the Applicant herein, she being a co-guarantor with other guarantors will continue to be liable for the debts of the Corporate Debtor for the amount guaranteed under the Deed of Guarantee.

CP (IBC)/23/KOB/2022

8. Under consideration is Application No. CP(IB)/23/KOB/2022, filed under Section 95 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016") r/w 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). The relief sought for is to initiate Corporate Insolvency Resolution Process (hereinafter referred as CIR Process") against the Personal Guarantors of M/s. Trivandrum International Health Services Ltd. for the default amount of **Rs. 14,24,90,488/- (Rupees Fourteen Crore Twenty-Four Lakhs Ninety Thousand Four Hundred and Eighty-Eight Only)** in respect of credit facility availed on behalf of M/s. Trivandrum International Health Services Ltd. (hereinafter referred as the "Corporate Debtor") from the Creditor.

9. The facts as narrated in the application and explained by the Applicant are summarized hereunder:
- i. The Applicant Bank has sanctioned Cash Credit Facility of Rs.1 Crore and Term Loan Facility of Rs. 15 Crore to the Corporate Debtor M/s. Trivandrum International Health Services Ltd vide sanction letter dated 30.03.2015 and the Corporate Debtor has executed Master Credit Agreement, Term Loan Agreement, and other loan documents for availing the credit facilities. As security towards the grant of credit facilities, the directors of the Corporate Debtor namely, Dr.Ashalatha Nair, Dr. Bharath Chandran C and Shri. P A. Ahamed have executed personal guarantees. In addition to that M/s. Trivandrum Medical Specialty Services Ltd and Dr. K N Pai Heart Foundation, have also executed a Guarantee in favour of the Applicant.
 - ii. Due to failure in the repayment, the accounts of the Corporate Debtor became NPA on 30.05.2016. Hence, the Applicant issued a demand notice on 29.06.2016 and also issued a notice under Section 13(2) of the SARFAESI Act on 22.07.2016 demanding an amount of Rs. 8,64,71,256/- against the Corporate Debtor and Personal Guarantors by invoking the personal guarantees.
 - iii. In the meantime, a meeting was convened by the Corporate Debtor, Financial Creditor and other lenders in the presence of the Finance Minister to discuss the restructuring of the loan facility and repayment of the arrears and a decision was arrived at the meeting to grant reasonable opportunity to the Corporate Debtor to settle the arrears. But the Corporate Debtor continued the default. Hence, the Applicant filed OA No 156/2018 before the DRT on 28.02.2018. Thereupon vide

Letters dated 06.12.2018, 13.12.2018 and 11.01.2019, the Corporate Debtor submitted a One-Time Settlement (OTS) proposal to settle the dues of Rs.8.15 Cores within 180 days. The Applicant approved the OTS proposal vide sanction letter dated 22.01.2019 and the same was acknowledged by the Corporate Debtor. The Corporate Debtor sought time till 20.02.2019 for payment of 5% advance amount under the OTS Scheme. In terms of the OTS, the liabilities of the Financial Creditor have to be repaid by the Corporate Debtor on 30.06.2019. However, the Corporate Debtor failed to adhere to the terms of OTS and committed a default in repayment of the outstanding liabilities. Hence the Applicant initiated CIRP against the Corporate Debtor filing IBA/51/KOB/2019 on 10.12.2019 and this Tribunal admitted the application on 07.02.2020 and initiated CIRP. The outstanding liabilities of the Corporate Debtor as of the insolvency commencement date of the Corporate Debtor i.e., on 30.11.2019 is Rs.14,24,90,488/-.

- iv. On 09.11.2021 under Section 95(4)(b) of IBC, the Creditor Bank has issued demand notice to the Personal Guarantors. Notice issued to the personal guarantor Dr. Asalatha Nair returned as 'not claimed'. Thereafter, notice was issued to the correct address of the Respondent, but the Respondent Dr. Asalatha Nair intentionally not accepted the Notice. Hence there is a deemed service of notice under Sec 27 of the General Clauses Act. The Respondent has neither paid the dues nor she sent any reply within 14 days from the date of receipt of the demand notice.
10. On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide order dated 05th May 2022 appointed **Mr. Raj Mohan R.**, as Resolution Professional directing him to file report under Section 99 of Insolvency and Bankruptcy Code, 2016. The Resolution Professional has filed

the report recommending the admission of the application filed under Section 95 of IBC, 2016. The grounds for admission of the application as per the Report are as follows: -

- (i) Debt owed by M/s. Trivandrum International Health Services Ltd to the Applicant, Dhanalaxmi Bank Ltd is Rs. 14,24,90,488.00 as evidenced by the certified copy of the statement of Balances as on 30.11.2019 annexed to the application. Dr. Asalatha Nair had extended personal guarantee dated 31.03.2015 (Rs.16,00,00,000) as evidenced by the deed of guarantee submitted along with the application. The applicant has invoked a personal guarantee against Dr. Asalatha Nair by issuing a notice on 09.11.2021 directing them to pay the amount in default Within 14 days of receipt of the notice of demand. However, the personal guarantors failed to repay the amount in default within 14 days from the date of receipt of the notice. Hence the debt owed by Dr. Asalatha Nair to the applicant is Rs. 14,24,90,488.00. The amount is not disputed by the Corporate Debtor, M/s. Trivandrum International Health Services Ltd or by the personal guarantors and hence the requirement under section 95(4)(a) is satisfied.
- (ii) Demand notice dated 09.11.2021 was issued to the personal guarantor, which was delivered on 26.11.2021 as evidenced by India Post Acknowledgement annexed to the application. No repayment has been made within 14 days of receipt of notice satisfying the requirement of Section 95 (4)(b).
- (iii) The Applicant, Dhanalaxmi Bank Ltd has provided me with a copy of the Account statement of the Corporate Debtor, M/s. Trivandrum International Health Services Ltd along with the copy of the application Thus meets the requirement set out in Section 95 (4)(c).

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- (iv) The Applicant has served a copy of the application to Dr. Asalatha Nair (Personal Guarantor), Dr. Bharath Chandran (Personal Guarantor) and Shri. P. A. Ahammed (Personal Guarantor) and M/s. Trivandrum International Health Services Ltd (Corporate Debtor) as evidenced by proof of service.
- (v) The Application is submitted in Form C with a fee of Two Thousand Rupees as prescribed under rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. Receipt from Bharatkosh.gov.in is submitted as proof of payment of fees under section 95(7).
11. On 20.05.2022 the Personal Guarantor/Respondent filed her reply statement and stated that M/s. Trivandrum International Health Services Limited availed term loan facility from the Creditor Bank to which the Respondent herein executed a Deed of Guarantee on the strength of the collateral security provided by M/s. Trivandrum International Health Services Limited. Vide Amendment letter dated 25.05.2015, the sanction letter dated 30.05.2015 was amended by the Petitioner/ Creditor has given approval for excluding 80 Cents of land with building housing Oncology Block (5/10th share over 1Acre 60(80) Cents in Re.sy. no.588/23) of Ulloor village, Trivandrum Taluk) leased to the Corporate Debtor. The applicant bank has created parapassu charge only on the 'leasehold' whereas the application Form C while disclosing the Secured Debt including particulars of security held (6(d) in PART III) states that there is a paripassu charge on equitable mortgage.
12. It is stated that vide amendment letter dated 08.07.2015, the sanction letter dated 30.03.2015 was further amended whereby the applicant creditor had given approval for release of the sanctioned limit with modification in the total extent of land under paripasu coverage from the existing extent of 106.25

cents to 104.84 cents in Ulloor Village, Trivandrum Taluk and District with a coverage of 52.81% on DSV. The committee had also approved the change in the exclusive collateral cover from the existing 9.80 cents in the name of Corporate Debtor to 3.953 Cents of Land u/s 592/7, Ulloor Village Trivandrum Taluk and District in the name of Dr. K N Pai Heart Foundation.

13. The Respondent stated that the aforesaid amendment was done without intimating the surety or obtaining her prior consent as such she is discharged of such subsequent transactions in terms of Section 133 of the Contract Act. Hence this Company Petition filed for repayment of amounts payable pursuant to the Sanction letter dated 30.03.2015 is not maintainable.
14. It is stated that the Resolution professional further vide his letter dated 07.05.2022 requested the Respondent to show evidence of repayment in terms of Section 99(2) of the I&B Code but however, failed to comply with his obligation under Section 99(1). The respondent submits that a resolution professional is bound to 'examine' an application filed under Section 95 before proceeding to request the respondent to show evidence of repayment in terms of Section 99(2). Hence the petition CP(IB)/23/KOB/2022 filed based on incorrect liability and Deed of Guarantee is not maintainable.
15. The Respondent had referred to the decision of the Hon'ble NCLAT in *Dr. Vishnu Kumar Agarwal Vs. Piramal Enterprises Ltd.* (2019 SCC Online NCLAT 542), had held that once a claim filed by a creditor under Section 7 of the Code is admitted as against the corporate debtor or the personal guarantor as the case may be, no proceedings for the same set of claims may be initiated against the other. The respondent submits that the aforesaid decision is in the light of the fact that a co extensive liability against the guarantors would give the applicant a free hand in unjustly enriching himself. The respondent submits that applicant herein is now proceeding to invoke personal insolvency against 3 personal guarantors of the Corporate Debtor for a sum of Rs. 16,00,00,000/-

from each of them. This according to the respondent gives a free hand to the applicant to recover sums which are far more than what they are entitled. The respondent further submits that the aforementioned decision of the Hon'ble NCLAT has been appealed before the Hon'ble Supreme Court, but no stay granted to them.

FINDINGS

16. We have heard the learned counsel for the parties at length and perused the entire case records/documents. We have also gone through the averments in IA(IBC)/108/KOB/2022 filed by the Personal Guarantor and Report No. 117/KOB/2022 dated 20.05.2022 filed by the Resolution Professional. In order to arrive at a decision in the matter, we have framed the following issue:
- Whether the Company Petition is maintainable?
17. In order to answer this issue, we have gone through Clause 11 and Clause 14 of the Deed of Guarantee which is quoted hereunder:

“11. Bank shall have full discretionary power with or without reference or notice or consent of the Guarantors to grant time or other indulgences to or accept or make any composition or arrangement with the Borrower or any persons or persons liable in respect of any indebtedness or liability hereby guaranteed and also vary abstain from, exchange, renew, discharge, release, enforce and deal with the whole and in part and from time to time any bills, notice, mortgages, charges, liens or any securities, obligations or decrees now or hereafter held by the Bank in respect thereof and generally to treat the Guarantors as primarily and severally liable along with the Borrower”

14. The Guarantor hereby consents/s to the Bank for making any variance as it may deem fit in terms of its contract with the Borrower or to their determining, enlarging or varying any credit to the Borrower or their making any composition

with the Borrower or promising to give time or agreeing not to sue or to their parting with any security they may hold for the guaranteed debt and accordingly, the Guarantor/s shall not be entitled to claim any of the rights conferred on sureties by Section 133, 134, 135, 139 and 141 of the Indian Contract Act, 1872. "

18. On a reading of the above Clauses of the Deed of Guarantee, it is seen that the Guarantor has admitted the Deed of Guarantee and the terms agreed therein unconditionally giving consent to the Creditor and to the Borrower to vary the terms of the contract and securities, without admitting it is immaterial whether there is any change or variance in the security or other loan documents. In this respect we have gone through the decision of the Hon'ble Supreme Court in *Lalit Kumar Jain Vs. Union of India and Others* (Transferred case (Civil No. 245/2020) in the said case the Hon'ble Supreme court had to decide between two rights – the contractual right of the personal guarantor and the right of the creditors, which are generally public sector banks. The court chose the latter as a public policy decision. The court in the present case seems to have followed the Benthamite approach of justice. As the debt recovery rates of Indian banks have been abysmal in recent years, the burden ultimately falls on the taxpayers. This judgment will take some of that burden off from the shoulders of the taxpayers and will put it on the personal guarantors who are generally financially strong and have agreed to repay the sum in case of default. This judgment is perceived as a welcome move by creditors, who may now recover their dues from both the corporate debtor and the personal guarantor thereof under one forum simultaneously. Further, now even if any creditor wants to proceed against the personal guarantor to the corporate debtor following the CIRP of the latter, it shall be permissible under the IBC, as the judgment clearly lays down that the resolution plan does not extinguish the guarantors' liability. However, when viewed from a different perspective, the effect of this judgment will necessarily result in disincentivizing individual personal guarantors from

extending a guarantee cover to the corporate debtors. Further, in view of this judgment passed by the Hon'ble NCLAT in *Lalit Mishra & Ors. v. Sharon Bio Medicine Ltd. & Ors.* (2018 SCC OnLine NCLAT 669) the right of subrogation available to the personal guarantor, ceases to exist in furtherance of the larger purpose of the Code to revive corporate entities. The aforesaid right of subrogation is an essential principle of law of guarantee and is envisaged in the Contract Act under Section 140 which states that "*Where a guaranteed debt has become due, or default of the principal - debtor to perform a guaranteed duty has been taken place, the surety, upon payment or performance of all that is liable for, is invested with all the rights which the creditor had against the principal – debtor*". Hence, the technical objection raised on the ground of maintainability is raised only for the sake of objecting and hence stands rejected. In view of what is stated above, we do not find any merit in **IA(IBC)/108/KOB/2022** which is **DISMISSED** as devoid of merit.

19. Since, we found that the CP(IBC)/23/KOB/2022 is maintainable, we are proceeding to dispose of the CP(IBC)/23/KOB/2022 as below.
20. On-going through the averments in the Company Petitions and the report of the Resolution Professional narrated above, and after hearing the learned counsel for the Applicant and the Respondents/ Personal Guarantors we are of the considered opinion that this is a fit cases for admission and proceed against the Respondents/ Personal Guarantors and initiate Corporate Insolvency Resolution Process. It is also seen from the report of Resolution Professional that he has not recommended for a negotiation between the parties for arriving at an amicable settlement for repayment. Hence, **we admit CP(IBC)/23/KOB/2022** filed under the provisions of Section 95 of IBC, 2016 under Section 100 of the IBC, 2016 and initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the

application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period;

- a) Any pending legal action or proceeding 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; and
- c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

21. The Resolution Professional viz., **Mr. Raj Mohan R**, an Insolvency Resolution Professional having **Registration No: IBBI/IPA-001/IP-P-02331/2020-2021/13517**, office at **Rajbhavan, HS 514/12/1 and 175A, Krishnapuram, 6th Street, Ollukkara P. O., Thrissur, Kerala- 680 655 [e-mail id – rajmohanip@gmail.com]** who was appointed when the Section 97 application was allowed vide Order dated 05.05.2022, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Kochi Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub-Section (1) of Section 102(2) shall include: -

- (a) details of the order admitting the application;

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- (b) particulars of the resolution professional with whom the claims are to be registered; and
- (c) the last date for submission of claims.
22. The publication of notice shall be made in two newspapers, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution Professional shall furnish two spare copies of the notice to the Registry for the record.
23. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of a) the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be; and b) claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs. The repayment plan may authorize or require the Resolution Professional to: -
- (a) carry on the debtor's business or trade on his behalf or in his name; or
- (b) realise the assets of the debtor; or
- (c) administer or dispose of any funds of the debtor.
- The repayment plan shall include the following, namely; -
- (a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
- (b) provision for payment of fee to the Resolution Professional;
- (c) such other matters as may be specified.

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24. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.
25. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefor. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-Section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors [as per the list prepared] shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.
26. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.
27. The Resolution Professional shall submit his periodic reports before this Tribunal, as per rules.
28. Registry is directed to communicate this order to the respective parties through email.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA (IBC)/108/KOB/2022
IN CP (IBC)/23/KOB/2022
&
CP (IBC)/23/KOB/2022

In re: Dhanalaxmi Bank Ltd. Vs. Dr. Ashalatha Nair

29. Certified copy of the order be issued on request of the parties as per the procedure.

30. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2022.12.22 14:48:59 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2022.12.22 14:18:33 +05'30'
RAJ

P. Mohan Raj
Member (Judicial)

Signed on this 22nd day of December, 2022

Rajasree