

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

IA(IBC)/38/KOB/2022

IN

IA(IBC)/128/KOB/2021

IN

MA/05/KOB/2020

IN

TIBA/01/KOB/2019

(Under Section 35(1) (n) & 60(5) of IBC, 2016)

In the matter of:

IA (IBC)/38/KOB/2022

1. SHAWN JEFF CHRISTOPHER, Liquidator, Wilmont Park Business Centre, Pallimukku, Kochi, Ernakulam, Kerala – 682 016.

...Applicant

-Versus-

1. THE SENIOR MANAGER, Union Bank of India, Karamana Branch, Chackrath Towers, Karamana, Trivandrum – 695 002;
2. THE SENIOR BRANCH MANAGER, Bank of India, Puthenchanthai Branch, Saujanya Building, PB 51, M.G Road, Trivandrum – 695 001; **(Set Ex-parte)**
3. THE MANAGER, State Bank of India, Panavila Branch, Ground Floor, Kousthubham Commercial Complex Panavila P.O, Trivandrum, Kerala – 695 014;
4. THE MANAGER, ICICI Bank, Sasthamangalam Branch, Trivandrum, Tc-9/1106, Kerala – 695 010;
5. THE SENIOR BRANCH MANAGER, State Bank of India, Sasthamangalam Branch, Sowparnika Towers, Sasthamangalam, Trivandrum – 695 010;
6. THE SENIOR MANAGER, State Bank of India, Gomadath Shopping Complex, Opp. Private Bus Stand, Mavelikara – 690 101;
7. THE SENIOR MANAGER, State Bank of India, PB Bo. 1203, Indusree, TCV 498, Peroorkada, Trivandrum – 695 005;

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8. THE LEGAL MANAGER – RPM, HDFC Bank Ltd, SL Plaza, 3rd Floor, Palarivattom – 682 025; **(Set Ex-parte)**
9. THE MANAGER, Kotak Mahindra Bank Limited, First floor, Kanaka Damodar Building, Opp. International Hotel, Veekshnam Road, MG Road, Cochin, Ernakulam – 682 035; **(Set Ex-parte)**
10. Mr. REGI SIVANKUTTY, Vishakathil, Olakettiambalam, Thekkakkara, Alappuzha, Kerala – 690 510;
11. Mrs. REVATHY RADHAKRISHNAN, Jalaram Chambers, Block No. AT. 5, Opp. Puja Estate, Sojithra Road, Vithal Udyognadar Anand, Gujarat, India – 388 121;

... Respondents

Appearances (through video conferencing)

For Applicant's	:	Mr. Shawn Jeff Christopher, Liquidator
For Respondent's	:	Mr. Varughese Cherian, (R1) Mr. Vinod P V & Ms. Reetha D For (R3, R5 to R7) Mr. Anzil Salim & Mr. Lal K Joseph For (R4) Mr. Simod Sivan (R10 & R11)

Coram:

Shri P. Mohan Raj	:	Member (Judicial)
Shri Satya Ranjan Prasad	:	Member (Technical)

ORDER

1. This Interlocutory Application No. IA(IBC) 38/KOB/2022 has been filed under Sections 35(1)(n) and 60(5) of the Insolvency and Bankruptcy Code, 2016, (hereinafter called as the 'Code'), by Mr. Shawn Jeff Christopher

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(hereinafter called as the Liquidator), with the prayers mainly to the following effect:

- i) To direct the banks listed in the Annexure 1 to provide details of accounts operated in the name of Mr. Reji Sivankutty and Mrs. Revathy Radhakrishnan to the Liquidator.*
 - ii) To direct the banks listed in the Annexure 1 to freeze all such accounts operated in the name of Mr. Reji Sivankutty and Mrs. Revathy Radhakrishnan till the demand liability is completely met.*
 - iii) To issue recovery warrant executable by the Liquidator to effectuate payment towards the demand liability from the available balance in such bank accounts maintained by Mr. Reji Sivankutty and Mrs. Revathy Radhakrishnan so identified and freezed by those banks enlisted in Annexures 1 and 1A.*
 - iv) To direct ICICI bank having branch at Sasthamangalam Branch, Trivandrum, Tc-9/1 106, Kerala-695 010 to break open the locker and report to the Liquidator all its material contents for further action and also to close the Fixed Deposit and transfer the balance to Liquidator's account.*
2. It is noted that Achariya Techno Solutions (India) Pvt. Ltd. was a 'product development company' registered under the Companies Act 1956. The 'Liquidation Process' for the Corporate Debtor commenced on 19.02.2020 and dissolution application was filed 19.08.2021.
3. On 21st December 2021, this Tribunal passed an order in IA(IBC)/51/KOB/2021 IN MA/OS/KOB/2020 IN TIBA/1/KOB/2019 directing Mr. Reji Sivankutty residing at Vishakhathil, Olakettiambalam, Thekkekara, Alappuha, Kerala, India — 690510 and Mrs. Revathy Radhakrishnan residing at Jalaram Chambers, Block No. A T-S, Oppo.

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Puja Estate, Sojithra Road, Vithal Udyognadar Anand, Gujarat, India - 388121 to return a sum of Rs. 48,78,397/- to Achariya Techno Solution (India) Private Limited, which is found to be preferential transaction under Section 43 of the Insolvency and Bankruptcy Code 2016. The demand liability cast upon Mr. Reji Sivankutty and Mrs. Revathy Radhakrishnan and the Liquidator reported that, even after sending notices the judgment debtors have evaded compliance of the Order passed by this Tribunal on 21.12.2021. The demand liability from Mr. Reji Sivankutty and Mrs. Revathy Radhakrishnan as on date to Achariya Techno Solution (India) Private Limited is Rs. 48,78,397/- (Mr. Reji Sivankutty — Rs. 42,50,397/- and Mrs. Revathy Radhakrishnan — Rs. 6,28,000/-).

4. A report dated 06.01.2022 and 11.02.2022 was filed by the Liquidator before this Tribunal stating the non-compliance of Mr. Reji Sivankutty and Revathy Radhakrishnan. The Corporate Debtor was not following a proper system of maintaining KYC of Directors or Employees. The Liquidator identified banks having had transaction with the Corporate Debtor in the past and the Liquidator requested State Bank of India, Bank of India and ICICI Bank to provide information about the accounts maintained by Mr. Reji Sivankutty and Mrs. Revathy Radhakrishnan in their branch. Mr. Reji Sivankutty has protested the action of freeze Vide letter (Annexure 8 — Letter from Reji Sivankutty). The Liquidator submits that, the Adjudicating Authority Vide its orders dated 21.12.2021, 17.01.2022, 24.01.2022, 14.02.2022 have directed the Liquidator to immediately take appropriate steps for recovery.
5. **Respondent No. 1** through their reply stated that as per the Order dated 24.02.2022, a search made on the 'name details', no account found in the names of Mr. Reji Sivankutty and Mrs Revathy Radhakrishnan. But there is an account in the name of 'M/s Acharya Techno Solutions India Private

Limited' and the same was operated by Mr. Reji Sivankutty along with other persons of the company and is already under freeze due to lack of sufficient transactions/ operations. R1 was discharged by this Authority by an order dated 22.08.2022.

6. **Respondent Nos. 3,5,6 and 7** has already complied with the Orders of this Tribunal dated 14.03.2022 to submit the bank account details of Mr. Reji Sivankutty and Mrs. Revathy Radhakrishnan and also to freeze their bank accounts. **Respondent No.4** in their counter stated that an amount of Rs.10,916.621/- is the total balance amount as on 31.03.2022 in the Bank Account of the person named Sri. Reji Sivankutty @ Reji S. with the ICICI Bank, Sasthamangalam branch, Trivandrum in the Bank Account No. 118001500420 and an amount of Rs.1,06,467.19/- is the total balance amount as on 31.03.2022 in the Bank Account of the person named Mrs. Revathy Radhakrishnan with the ICICI Bank, Sasthamangalam branch, Trivandrum in the Bank Account No. 033601521 103.
7. **Respondent Nos. 10 and 11** filed a counter and the learned counsel for them submitted that an Appeal is pending before the National Company Law Appellate Tribunal which is numbered as Company Appeal (AT) (CH) (INS) No.36 of 2022 & IA No.69 of 2022 against the order dated 21.12.2021 of this Tribunal in IA(IBC)51/KOB/2021 in MA/05/KOB/2020 in TIBA/1/KOB/2019 the same is posted for final hearing. If the appeal is allowed, the petition filed before this Hon'ble Court for realization of money will become infructuous. Therefore, this Tribunal may keep in abeyance all the further proceedings arising out of the order 21.12.2021 of this Tribunal in IA(IBC) 51/KOB/2021 in MA/05/KOB/2020 in TIBA/1/KOB/2019 in the interest of Justice till the appeal pending before the Hon'ble NCLAT attains finality.

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8. It is found that this Tribunal in IA(IBC)/51/KOB/2021 vide order dated 21.12.2021 on the basis of Transaction Audit and Forensic Audit found preferential transaction of an amount of Rs.1,38,78,397/- during the relevant period. Out of which Mr. Reji Sivankutty (Suspended Managing Director) has transacted for Rs. 42,50,397/- and Mrs. Revathy Radhakrishnan w/o Mr. Reji Sivankutty (Director) has transacted Rs.6,28,000/- (totalling 42,50,397 + 6,28,000=48,78,397). Thereby decided that this amount should be returned to the Liquidator for distributing among the stakeholders. Direction was already given to Mr. Reji Sivankutty and Mrs. Revathy Radhakrishnan (R10 & R11) to return this amount to the Liquidator **within two weeks** from the date of receipt of this order. Since, the suspended Directors do not comply with the order and the Liquidation process is on the last phase, and as the Liquidator has already filed a dissolution application, the Liquidator was directed to take immediate steps to recover the amount from the suspended Managing Director/ Director.
9. We have considered the matter in hand in the background of facts and circumstances stated above and as there is no interim stay granted by the Hon'ble Appellant Authority and Apex Court against the order of this Tribunal dated 21.12.2021, we are of the considered view in order to give an effect to the order of this Authority dated 21.12.2021 the following order needs to be passed.
- (i) The Banks mentioned in Annexure 1, Respondents No.2,4,8, and 9 are directed to provide the details of the account operated in the names of Respondents No.10 and 11 viz. Mr. Reji Sivankutty and Mrs. Revathy Radhakrishnan to the applicant Liquidator and to freeze such accounts till the demand liability is recovered.
- (ii) The applicant/Liquidator is directed to effectuate payments from available balances in identified and frozen bank accounts (Annexure 1

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- and 1A) maintained by Mr. Reji Sivankutty and Mrs. Revathy Radhakrishnan towards the demand liability.
9. Thus, with the above direction this Application No.38/KOB/2022 is **ALLOWED**.
10. 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.
11. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2022.11.30 15:27:09 +05'30'

Satya Ranjan Prasad
Member (Technical)

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PANDIAN MOHAN RAJ
Date: 2022.11.30 16:19:57
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MOHAN RAJ

P. Mohan Raj
Member (Judicial)

Signed on this 30th day of November, 2022.

Cimyy Varghese