

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

KOCHI

CP(IBC)/55/KOB/2022

(Under Section 95 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:

Union Bank of India, Chalai Bazar Branch, Chalai, Thiruvananthapuram,
Kerala- 695 036. Email: - ubin0539589@unionbankofindia.bank.

... Financial Creditor

-Versus-

E.M. Najeeb Ellias Mohammed, 6D, Kowdiar Manor, Jawahar Nagar,
Thiruvananthapuram, Kerala - 695 041. Email: - emnajeeb@atetravel.com.

... Personal Guarantor

Coram:

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

Parties / Counsel present (through video conference):

For Financial Creditor : Mr. A.S.P. Kurup,
Mr. Sadchith P. Kurup,
Mr. C.P. Anil Raj,
Mr. Siva Suresh, Advocates.
For Personal Guarantor : M/s. KSR & Co Company
Secretaries LLP.

Order reserved on: 14.12.2022

Order pronounced on: 25.01.2023

ORDER

This application have been filed on 22.11.2022 by the Applicant /Financial Creditor M/s. Union Bank of India (hereinafter referred to as 'Financial

Creditor') 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 Mr. E.M. Najeeb Ellias Mohammed Respondent/ Personal Guarantor of the Corporate Debtor M/s. Green Gateway Leisure Ltd. (hereinafter referred to as "Corporate Debtor"), for initiating Insolvency Resolution Process against him.

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

- i. The Corporate Debtor M/s. Green Gateway Leisure Ltd. was incorporated for the purpose of development and implementation of a Five Star Deluxe Resort Hotel at Bekal, Kasaragod. The Resort is being developed in land, consisting of an area of 55.43 Acres, which was acquired by Bekal Resorts Development Corporation Limited ("BRDC"), a Kerala Government undertaking and leased in favour of the Corporate Debtor. The license for development of the land was originally granted by BRDC in favour of Air Travel Enterprises India Ltd. ("Air Travel"), a parent company of the Corporate Debtor, which was then holding more than 51% shareholding in the Corporate Debtor. The Corporate Debtor was engaged for the implementation of the resort and after its incorporation, BRDC transferred the license in favour of the Corporate Debtor on 16.10.2010. For the purpose of the project, the Corporate Debtor has availed various credit facilities from the Union Bank of India. It is stated that the security for sanctioning the above credit facility was paripassu first charge on the entire fixed assets (movable and immovable) of the Corporate Debtor, personal guarantee of Mr. E. M Najeeb Ellias Muhammed, Mr. Sahadulla M I, Mr. E Iqbal and Mr. Zaheer EN and Corporate Guarantee of Air Travel Enterprises India Limited.

- ii. It is stated that the Financial Creditor has granted a General Term Loan of Rs. 25 Crores to the Corporate Debtor by way of sanction letter dated 12.06.2010 which was renewed/restructured/modified on 29.09.2012, 24.02.2014, 12.01.2015 & 01.07.2016. The term loan was granted for setting up a Five Star Deluxe Resort at Bakel. The Corporate Debtor has accepted the terms of the sanction letter and executed various documents in favour of the Financial Creditor. The Corporate Debtor had executed Demand Promissory Note, Term Loan Agreement, Agreement of Hypothecation of Movables, Guarantee Agreement etc. in favour of the Financial Creditor to realize the term loan amount with interest and costs/and all other receivable charges or including proceedings against the mortgaged property and hypothecated assets.
- iii. It is stated that the Corporate Debtor has also executed necessary demand promissory note for Rs. 25 Crores in favour of the financial Creditor on 12.06.2010, 29.09.2012, 24.02.2014, 12.01.2015 and 01.07.2016. Further, M/s. Air Travel Enterprises India Ltd. represented by its Chairman had executed a Corporate Guarantee and other directors gave Personal Guarantee on 02.07.2010, 29.09.2012, 24.02.2014 & 12.01.2015 for the outstanding debt. After availing the loan facility there was no proper repayment in spite of repeated requests made by the Financial Creditor. The account was classified as NPA on 30.9.2015 and the Corporate Debtor was called upon to repay the debt. But the same was not done. The debt is secured through equitable mortgage upon which paripassu charge is available to the Financial Creditor. Hypothecation of goods also is available.
- iv. It is also stated that initially IBA/01/KOB/2020 was filed under Section 7 of the IBC which was admitted on 15.10.2020 and thereafter the matter was taken up in appeal and by the judgment dated 09.09.2021, the Hon'ble NCLAT had set aside the admission of the Section 7 application and directed the corporate debtor to settle the account within 6 months from the date of the appellate order. The amount as directed by the

Appellate Tribunal was not paid by the corporate debtor and even now amount is remaining outstanding in the loan account. Even though the corporate debtor came up with a proposal for settlement after the Hon'ble NCLAT order since the same was not viable, the same was not entertained by the financial creditor.

- v. It is further stated that since the Corporate Debtor is unable to pay the debt of Rs. 40,25,34,886/- as on 31.08.2022, the Applicant has decided to initiate a resolution process against the Guarantor under the Insolvency and Bankruptcy Code. Accordingly, as a pre-condition for filing the application, Financial Creditor has issued a demand notice to the respondent on 16.9.2022 under Rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019. The demand notice was received by the Personal Guarantor and he replied the same on 17.10.2022.
- vi. It is stated that the Financial Creditor invoked the personal guarantee of the respondent on 16.09.2022. Respondent as a personal guarantor to the Corporate Debtor failed to repay the debt of **Rs. 40,25,34,886/-** with further interest from 01.09.2022 within 14 days from the date of the demand notice issued under Section 95(4)(b) of IBC. Hence the Financial Creditor filed this application.
- vii. The Application is filed through Mr. Kizhakkekara Kuriakose Jose, Insolvency Resolution Professional having **Registration No: IBBI/IPA-001/IP-N00445/2017-18/10788**, office at K.K. Jose & Associates, Yenvee Complex, Temple Road, Aluva, Kerala- 683 101 and his declaration has been filed along with this application.

FINDINGS:

We have heard the learned counsel for Financial Creditor Mr. C. P. Anil Raj and Ms. Manjula Devi counsel for personal guarantor and pass this order.

3. As far as the present Application is concerned, it pertains to the Insolvency Resolution Process of Individuals. Under section 95(1) of IBC postulates that Creditor may either by himself or through a Resolution Professional file an Application for initiating Insolvency Resolution Process against a Personal Guarantor or a Partnership Firm. This application is concern Mr. Kizhakkekara Kuraikose Jose an Insolvency Resolution professional having registration number IBBI/IPA-001/IP-N00445/2017-2018/10788 has filed this petition.
4. M/s. **Green Gateway Leisure Ltd.** (hereinafter referred to as “Principal Borrower”) availed financial facility from the petitioner/Creditor herein to an extent of Rs. 25 crores. For the said finance facility, the Respondent herein viz **Najeeb Ellias Mohamed** stood as a Guarantor. It was submitted that the principal Borrower has committed default in repayment of the dues and as a result thereof, Non-Performing Asset (NPA) by the creditor on 30.09.1995. It was submitted that the personal Guarantor has failed to pay the due Amount of Rs. 40,25,34,886/-.
5. The Creditor herein has issued a demand notice on provided under Section 95 (4) (b) of IBC 2016 R/w Rule 7 (1) of the Insolvency and Bankruptcy Resolution Process for personal Guarantors to Corporate Debtor) Rule, 2019, calling upon the Personal Guarantor to pay an amount of Rs. 40,25,34,886/-, despite receipt of demand notice dated 16.09.2022, the Personal Guarantor has failed to repay the outstanding dues and continue to commit default till date.
6. At the time of hearing for respondent Ms.Manjula Devi Advocate appeared and raised the preliminary objection that this petition is barred by limitation. On bare perusal of records shows that OTS arrived on 27.11.2019, further this plea was accepted by NCLAT in Appeal No.993 of 2020 by order dated 09.09.2021, further as per the Apex court SUO Moto direction the period between 15.03.2020 and 28.02.2022 is excluded from limitation, hence without going into merit, prima facie we find that the petition complied all the requirement of section 95 of IBC 2016.
7. In view of the above provision and that the applicant has complied with Section 95(4) quoted above and also that the demand notice dated 16.09.2022 was sent to the Respondent, however, the Respondent failed to make the payment, we have

come to the conclusion that there is a default on the part of the Personal Guarantors/Respondents 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. Hence, this Tribunal ordered as under: -

- i. The aforesaid application 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 **Union Bank of India** against Mr. E. M. Najeeb Ellias Mohammed **Personal Guarantor** of the Corporate Debtor **M/s. M/s. Green Gateway Leisure Ltd.** is **Allowed** with the following directions: -
- ii. 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 an effect on the date of admission
- iii. During the 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.
- iv. Since the application has been filed through **Mr. Kizhakkekara Kuriakose Jose**, an Insolvency Resolution Professional having **Registration No: IBBI/IPA-001/IP-P00445/2017-2018/10788**, office at KK Jose & Associates, Yenvee Complex, Temple Road, Aluva, Kerala- 683 101 he is appointed as the Resolution Professional, to carry out functions as mentioned under the Insolvency and Bankruptcy Code, 2016. He has produced the Form B, authorization for Assignment and also Form A, written consent to act as RP. 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.

- v. That this Bench also directs that an advance payment of **Rs.2,00,000 (Rupees Two Lakhs only)** 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).
- vi. 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.
- vii. 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.
- viii. List the above IBAs for further proceedings on 01.03.2023

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.01.25 12:33:52 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.01.25 12:58:44 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this 25th day of January, 2023.

Supriya. P_S.