IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH, KERALA

CP(IBC)/35/KOB/2021

and

CP(IBC)/36/KOB/2021

(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)

Order delivered on: 02.12..2021

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Hon'ble Mr. Anil Kumar B, Member (Technical)

In the matter of

CP(IBC)/35/KOB/2021

M/s. The Kerala State Co-operative Bank Ltd,

CCM & R Department,

Head Office, Co-Bank Towers,

Palayam, Thiruvananthapuram. ... Petitioner/Creditor

Versus

Mr. Babu George,

Thekkedathu Valavukayathil,

Kalanjoor P O,

Pathanamthitta- 689 694 ... Respondent/Personal Guarantor

CP(IBC)/36/KOB/2021

M/s. The Kerala State Co-operative Bank Ltd, CCM & R Department,

Head Office, Co-Bank Towers,

Palayam, Thiruvananthapuram. ... Petitioner/Creditor

**Versus**

Mr. K Sivadas,

JeevaBhavan, Kalayanadu

Plachery P O,

Kollam ... Respondent/Personal Guarantor

Appearance – (through video conferencing)

For Petitioner/Creditor : Shri. Sunil Shankar, Advocate

For Respondents/Personal Guarantors: Shri. Akhil Suresh, Advocate

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

2. These applications have been filed by the applicant /Financial Creditor M/s. The Kerala State Co-Operative Bank Limited(hereinafter referred to as 'KSCB') 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. Babu George and Mr. K. Sivadas, Respondents/ Personal Guarantors of the Corporate Debtor M/s. Lake view Ayurvedic Resorts and Research Centre Private Limited(hereinafter referred to as "Corporate Debtor'), for initiating Insolvency Resolution Process.

3. The brief facts leading to the present application are as under: -

The Financial Creditor, M/s The Kerala State Co-operative Bank Limited, had sanctioned Term Loans to the tune of Rs.5,90,96,000/- to M/s Lake View Ayurvedic Resorts Private Limited by way of three loans of Rs 121 lakh on 29.07.2003, Rs 51 lakh on 13.01.2004 and Rs 418.96 lakh on 09.12.2004 with pari passu agreement with KSIDC on the assets of the company and the original title deeds were pledged with KSIDC. The project was commissioned on 07.07.2002 with Sri. Babu George as Managing Director and Dr. K. Sivadas as Director. The project is situated in 13.4 acres of land including 4.50 Acres of Puthuval.

4. The applicant stated that in violation of the terms and conditions stipulated in the Agreement as well as loan sanction letters, the Directors of Corporate Debtor had transferred the company to a new promoter group headed by Sri. Chandy Mathew, an Ex -NRI. However, the applicant did not accept the change of management because the loan was sanctioned on the security of project proposal and personal guarantee of the directors viz. Sri. Babu George and Sri. Sivadas. Therefore, the applicant has all rights to take legal action to recover the loan amount from the assets of the company and from the personal properties of Sri. Babu George and Dr. Sivadas who are the guarantors for the loan.

5. Consequently, KSIDC had filed an ,application under Section 7 of the IBC, 2016 to initiate Corporate Insolvency Resolution Process against M/s Lake View Ayurvedic Resorts and Research Centre Pvt Ltd and this Tribunal vide Order dated 06.11.2019 admitted the application filed by the KSIDC.

6. The applicant realized that it is not feasible to realize the amount outstanding towards the loan account through the liquidation process. Therefore, the Interim Board of the Bank vide proceedings No. 78 dated 03.02.2020 resolved to file insolvency petition against the guarantors of Corporate Debtor Sri. Babu George and Sri Sivadas.

7. In this case the applicant proposed the name of an Insolvency Professional Shri. Francis Mathew, and produced his written consent in Form A as per Regulation 4 (2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Regulations, 2019. The learned Insolvency Professional certified that there are no disciplinary proceedings pending against him with the Board or Insolvency Professional Agency. However, as item No. (3 (e) & (f)) regarding disclosure of pending works with him, he has stated that he has no processes on the date of consent. However, on verification of records of this Tribunal, it is seen that he is performing the duties of IRP in CP (IBC)13/KOB/2021 TO CP(IBC)/19/KOB/2021 as per the orders of this Tribunal in the above matters. In view of the aforesaid facts, it is proposed to nominate the name of an Insolvency Professional from the panel for the period from 01.07.2021 to 31.12.2021 in respect of NCLT Kochi Bench for appointment as IRP in this matter.

__Findings:__

8. We have heard the learned counsel for the applicants and have perused the whole case records including the documents appended thereto.

In this connection it is profitable to quote Section 95 of I&B Code, 2016: -

राष्ट्रीय कम्पनी विधि अधिकरण NATIONAL COMPANY LAW TRIBUNAL KOCHI BENCH कोच्चि खंडपीठ

"(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."

9. In view of the above provision and that the applicants have complied with Section 95(4) quoted above, that the demand notices dated 28.04.2021 have been sent to the Respondents/Personal Guarantors 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 Financial Creditor 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 pass the following: -

## ORDER

10. These petitions 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 M/s The Kerala State Co-operative Bank Limited against Personal Guarantors of the Corporate Debtor M/s Lake View Ayurvedic Resorts and research Centre Pvt Limited 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. This Tribunal appoints Ms. Celine P Thomas, an Insolvency Resolution Professional having Registration No: IBBI/IPA-001/IP-P-02358/2021-2022/13612, residing at 4B, Tulip, Skyline River Dale Apartments, Petta, Tripunithura ,Near Petta Bridge ,Ernakulam,Kerala,682301, Kerala as the Resolution Professional, to carry out the 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. This Bench also directs that an advance payment of Rs.2,00,000 (Rupees Two Lakh only) to be paid by the Applicants/Creditors to the Resolution Professional (RP) immediately to initiate the process, which amount 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 these Applications 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 Creditors as soon as the same is filed before this Adjudicating Authority.

vi. The Registry is directed to immediately communicate this order to the Creditors, 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.

List these applications for the report of Resolution Professional on 20.12.2020.

Dated this, the 2nd day of December, 2021

Sd/-
(Anil Kumar B)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

Certified to be True Copy-
07/12/2021
Deputy Registrar
National Company Law Tribunal
Kochi Bench



Memo No.CP(IB) 35&36/KOB/2021......

Date: 7th Dec. 2021

To

1. M/s. The Kerala State Co-operative Bank Ltd, CCM & R Department,Head Office, Co-Bank Towers, Palayam, Thiruvananthapuram. ... **Creditor**
2. Mr. Babu George, Thekkedathu Valavukayathil, Kalanjoor P O, Pathanamthitta- 689 694.(**Guarantor**)
3. Mr. K Sivadas, JeevaBhavan, Kalayanadu, Plachery P O, Kollam (**Guarantor**)
4. M/s. Lake view Ayurvedic Resorts and Research Centre Private Limited, Regd. Office Jeeva Bhawan, Placherry PO, Punaloor, Kollam District. (**Corporate Debtor**)
5. Ms. Celine P Thomas, residing at 4B, Tulip, Skyline River Dale Apartments, Petta, Tripunithura ,Near Petta Bridge ,Ernakulam,Kerala,682301, Kerala (**Resolution Professional**)