

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

IA(IBC)/277/KOB/2023

IN

CP (IB) 24/KOB/2022

&

IA(IBC)/278/KOB/2023

IN

CP (IB) 23/KOB/2022

(Under Section 112 of Insolvency Bankruptcy Code, 2016 r/w Regulation 20 of the IBBI (Insolvency Resolution Process to Personal Guarantor to Corporate Debtors) Regulations, 2019.

In the matter of:

DHANLAXMI BANK LIMITED.

IA(IBC)/277/KOB/2023

MEMO OF PARTIES:

CA Rajmohan R.,

Resolution Professional

Raj Bhavan, Hs 514/12/Land 175a

Krishnapuram, 6th Street, Ollukara P.O,

Thrissur, Kerala- 680 655

... Applicant

IN

Dhanlaxmi Bank Limited

2nd Floor, Karimpanal Arcade, East Fort,
Thiruvananthapuram

... Financial Creditor

-Vs-

Dr. Bharath Chandran

S/o Chandrasekharan Nair, 7773/26/362,
Nablakath, Thazhe Mangalam, Rishi
Mangalam, Thiruvananthapuram, Kerala

... Personal Guarantor

&

IA(IBC)/278/KOB/2023

MEMO OF PARTIES:

CA Rajmohan R.,

Resolution Professional

Raj Bhavan, Hs 514/12/Land 175a

Krishnapuram, 6th Street, Ollukara P.O,
Thrissur, Kerala- 680 655

... Applicant

IN

Dhanlaxmi Bank Limited

2nd Floor, Karimpanal Arcade, East Fort,
Thiruvananthapuram

... Financial Creditor

-Vs-

Dr. Asalatha Nair

W/o Dr. Bhadrans Nair, residing at 4C
Nikunjam Imperial Court, Kuravankonam,
Trivandrum, Kerala - 695 003

... Personal Guarantor

Order delivered on: 21.12.2023

Coram:

Hon'ble Member (Judicial) : TMT. Justice T Krishna Valli

Hon'ble Member (Technical) : Shri. Shyam Babu Gautam

Appearances:

IA(IBC)/277/KOB/2023

For the Applicant : Mr Rajmohan, RP
For the Personal Guarantor : Mr. Akhil Suresh, Advocate
For the Financial Creditor : Mr. Vinod PV, Advocate

IA(IBC)/278/KOB/2023

For the Applicant : Mr Rajmohan, RP
For the Personal Guarantor : Mr. Akhil Suresh, Advocate
For the Financial Creditor : Mr. Vinod PV, Advocate

ORDER

Per: Shyam Babu Gautam, Member (Technical)

1. As the facts and question of law are common in both the Interlocutory Applications, the matter is heard together and common order is passed.
2. These applications have been filed under Section 112 of the Insolvency Bankruptcy Code, 2016 r/w Regulation 20 of the IBBI (Insolvency Resolution Process to Personal Guarantor to Corporate Debtors) Regulations, 2019 by the Resolution Professional in the matter Dhanlaxmi Bank Limited, seeking a relief to take on record

the Reports of the RP reporting that the Personal Guarantors failed to submit a repayment plan within the allowed time.

3. This Tribunal vide order dated 05.05.2022 in CP(IB)/23/KOB/2022 and CP(IB)/24/KOB/2022 admitted the Insolvency Resolution Process of the Personal Guarantors, Dr Bharath Chandran and Dr Asalatha Nair in an application by the Financial Creditor, Dhanlaxmi Bank Limited under Section 95 of the Insolvency and Bankruptcy Code, 2016. Dr. Bharath Chandran and Dr. Asalatha Nair are the personal Guarantors to the Corporate debtor, M/s. Trivandrum International Health Services Ltd.
4. The Resolution Professional stated that he has made a public announcement inviting claims on 25.12.2022. After that, the RP prepared the list of claims and filed the Reports before this Tribunal. It is further submitted that after the extension of time of three times for submission of the repayment plan, the personal guarantors failed to submit a repayment plan and hence the Meeting of Creditors resolved to file the report before the Adjudicating Authority that no repayment plan has been received by the RP. Therefore, the RP prayed to take on record these Reports.
5. From the side of the Respondent/Personal guarantor in IA(IBC)/278/KOB/2023, the learned counsel Mr. Akhil Suresh, appeared and filed a counter affidavit to the report of the Resolution professional and stated that a batch of Writ Petitions were filed before the Hon'ble Supreme Court challenging the Constitutional validity of Section 95 (1), 96 (1), 97(5), 99(2), 99(4),

99(6) and 100 of the Insolvency and Bankruptcy Code, 2016. Since the provisions on the strength of which the Company Petition has been admitted are under challenge and sub-judice before the Hon'ble Supreme Court, the Respondent/Personal Guarantor prayed for keeping in abeyance all further proceedings pursuant to and in connection to CP(IB)/23/KOB/2022 until the Hon'ble Supreme Court hears and decides the matter.

6. As per section 105 of IBC, 2016 the debtor shall submit a repayment plan and then the Resolution professional shall submit the repayment plan along with his report to the Adjudicating Authority. After conducting the meeting of creditors on the repayment plan the Resolution professional shall prepare a report of the meeting of creditors and submit it to the Adjudicating Authority. The Adjudicating Authority then pass an order either approving or rejecting the report. But in this case, in the absence of any repayment plan filed by the personal guarantor, the supra procedure could not be carried out. The non-filing of the repayment plan causes a similar effect of rejection of the repayment plan under Section 114 as provided under Section 115(2) of IBC 2016.
7. We have heard the learned Resolution Professional Mr. Rajmohan R., learned counsel for the Personal Guarantors and perused the materials available on record. We intend to pass a further order as provided under section 115(2) of IBC 2016, accordingly, the **report is taken on file** since the no repayment plan has been filed despite giving sufficient time. As a consequence of the non-filing of the

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& IA(IBC)/278/KOB/2023 in CP(IB)23/KOB/2022
In the matter of Dhanlaxmi Bank Ltd.

repayment plan by the debtor/personal guarantor, it is ordered that the debtor and creditors shall be entitled to an application for bankruptcy under Chapter IV. Thus, this application **is ordered stand disposed of.**

8. The Registry is hereby directed to forward the copy of this order to the IBBI as provided under section 115(3) of IBC 2016 and to send e-mail copies of the order to all the parties and their counsel for information and to take necessary steps.
9. Let the certified copy of the order be issued upon compliance with requisite formalities.
10. File be consigned to records.

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SHYAM BABU GAUTAM

(MEMBER TECHNICAL)

T.KRISHN
AVALLI

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TMT. JUSTICE T KRISHNA VALLI

(MEMBER JUDICIAL)

Dated this the 21st day of December 2023.

Krishna