

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

**IA(IBC)/179/KOB/2022  
IN  
CP(IB)/37/KOB/2021  
&  
IA(IBC)/178/KOB/2022  
IN  
CP(IB)/38/KOB/2021**

*(Under section 114 of IBC, 2016)*

***In the matter of:***

*Jose MM and Merin Jose, Personal Guarantors of ITMA Hotels India Pvt Ltd;*

**MEMO OF PARTIES:**

Jossy Steephen Kattur, Resolution Professional, IBBI Reg No. IBBI/IPA-002/IP-N01056/2021-22/13627;

**...Applicant**

***Coram:***

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

***Appearances (through video conferencing)***

For Applicant's : Jossy Steephen Kattur,  
(RP in person)  
For Personal Guarantor/Debtor : Liz Meghan Cyriac, Adv.  
For Financial Creditor : Vinod PV, Adv.

**Order reserved on: 17.11.2022**

**Order pronounced on:16.12.2022**

1. These Applications have been filed by the Resolution Professional (RP) seeking an order of this Tribunal under section 114 to reject the repayment plan which was rejected by the Financial Creditor as per the report of the RP under section 112 of IBC. Since, these Applications arise from the Insolvency resolution process of Personal Guarantors Mr. Jose M.M and Mrs. Merin Jose of ***ITMA***

*Hotels India Pvt Ltd*, the Corporate Debtor, both applications have been taken together and pass this.

**COMMON ORDER**

2. This Tribunal vide order dated 30.06.2022 taken on record the report submitted by the RP under section 112 on the repayment plan. As per the report, 5 COC meetings were conducted by the RP with the sole Financial Creditor- SBI. All communications were duly made between the Personal Guarantor (PG), the Financial Creditors and the RP on which basis the repayment plan was repeatedly modified and the final factors for considerations were asunder: -
- a) Initial Payment of 25% to be deposited by PG from his account;
  - b) Provision to add IRP Cost to be incorporated in repayment plan;
  - c) Justification for providing 62 crores instead of whole debt amount and reasons;
  - d) To provide a repayment plan with personal asset of PG rather than third party arrangements without any proper source of funds;
  - e) Legality of linking repayment plan of PG to be used for the dischargement of debt of CD.

It is reported that the RP and FC had taken legal opinions on the permissibility of linking repayment plan for the dischargement of debt of CD which was taken as not permissible under law. Further, the statement of affairs of the PG taken by Financial Creditor on the information supplied by PG did not validate the repayment scenario of the plan. It is reported that a valuation of property of PG was also held by an IBBI registered valuer. It is reported that after due deliberation and replies on above factors considered for purpose of repayment

of debt, on 8<sup>th</sup> June 2022 the modified repayment plan as provided by the PG was rejected by the Financial Creditor. The final outcome in report is reproduced as follows: -

**Outcome of the meeting of Creditors on the Repayment Plan  
/the recommendations of the RP.**

*The meetings of creditors had been conducted on various dates starting from May 12<sup>th</sup> 2022 until 8<sup>th</sup> June 2022. The creditors meeting which was comprised of a single creditor SBI, deliberated on the prospects and legality of the repayment plan and evaluated the plan in the light of legal opinion received from external lawyers and also from within SBI. The creditor's earnest attempt to make the plan legally viable failed due to the inability on the part of the Personal Guarantor to incorporate certain modifications proposed by the creditor. Creditors have proposed for a repayment plan with the remittance of the plan amount from direct personal account as well from the personal means and sources of income of the Guarantor. Though it was also suggested to remove the condition which links the Corporate Debtor (ITMA Hotels India Pvt Ltd) with the Repayment Plan of the Guarantor that has not been followed.*

*Documents like agreement /commitment letter etc from the investor as a support of the source of funds had been sought by*

*the creditor but the Personal Guarantor could not provide the same.*

*The Personal Guarantor has not complied with the above suggestions of the creditor and the relief sought by the Personal Guarantor to link the repayment plan with the corporate debtor's liability is not in compliance with the law.*

*The submitted repayment plan is not in compliance with the law and also not up to the satisfaction of the creditors. Due to this the repayment plan stands rejected by the creditor.*

3. This Tribunal had on 18.08.2022, issued notice to the Personal Guarantor and Financial Creditor to amicably settle the issue if possible. PG had thereafter opposed the application on the basis of the RP's report under section 112 stating that the PG has an investor who can settle the debt. It was further submitted that as sought by FC, the requirement of showing source of funds is not a requirement under regulation 17 of IBBI (IRP for PG to CD) Regulations, 2019 and hence the report is not maintainable.
4. Heard submissions and perused documents on record. Section 114(1) of the IBC, 2016 states as follows:

*"114. (1) The Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the resolution professional under section 112:*

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*Provided that where a meeting of creditors is not summoned, the Adjudicating Authority shall pass an order on the basis of the report prepared by the resolution professional under section 106.*

*(2) The order of the Adjudicating Authority approving the repayment plan may also provide for directions for implementing the repayment plan.*

*(3) Where the Adjudicating Authority is of the opinion that the repayment plan requires modification, it may direct the resolution professional to reconvene a meeting of the creditors for reconsidering the repayment plan.”*

This Tribunal has perused the report of the RP under section 112 wherein meetings and deliberations have been held between the PG and FC. Despite the same no viable repayment plan for the debt is found to be in place. This Tribunal had further granted an opportunity to PG to seek for an amicable settlement between the parties. However, it is noticed that the PG is not in a position to either repay the debt out of his funds or able to show any proper source of fund or to provide a viable repayment plan to the FC. Hence, it is fit to say that any further delay in this process will only put the Financial Creditor to detriment.

5. In view of above, both the Applications are **Allowed**, and the repayment plan under section 105 stands rejected in line with the report of the RP under section 112. In consequence of rejection of repayment plan the debtor and creditors are entitled to file an application for Bankruptcy under Section 121 (b) of IBC, 2016 within a period of three months from the date of this order.
6. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.

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7. Let the certified copy of the order be issued upon compliance with requisite formalities.
8. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD  
Date: 2022.12.16 16:32:59 +05'30'

**Satya Ranjan Prasad**  
**Member (Technical)**

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ  
Date: 2022.12.16 15:50:38 +05'30'

**P. Mohan Raj**  
**Member (Judicial)**

Signed on this the 16<sup>th</sup> day of December, 2022.

Rohit