

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**KOCHI BENCH, KERALA**

**IBA/42/KOB/2020**

*(Under Section 95(1) 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: 21<sup>st</sup> January,2022**

**Coram:**

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

**Hon'ble Mr. Shyam Babu Gautam , Member (Technical)**

State Bank of India  
Stressed Asset Resolution Branch (SARB),  
Ernakulam, 7<sup>th</sup> Floor, Vankarath Tower  
Palarivattom , Bypass Junction  
Ernakulam,  
Kerala- 682 024

: Applicant/Creditor

Versus

Sahadulla M.I  
69, Rastanura, RPD Mark,  
KuravanKonam, Kowdiar,  
Thiruvanathapuram,  
Kerala- 695 003.

: Guarantor/Respondent

**Parties/Counsel present (through video conference)**

For Applicant ... Shri Vinod P.V., Advocate.

For Respondent ... Shri. Sivasankar G, Advocate.

***Per: Ashok Kumar Borah, Member (Judicial)***

Under consideration is an Application No. IBA/42/KOB/2020 filed under Section 95 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "IBC, 2016") r/w Rule 7 (2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for IRP for Personal

Guarantors to Corporate Debtor) Rules, 2019. The relief sought for is to initiate Corporate Insolvency Resolution Process (hereinafter referred as CIR Process") against Mr. Sahadulla M.I. Personal Guarantor of M/s. Green Gateway Leisure Limited for the default amount of Rs. **72,63,09,421/-** in respect of credit facility availed on behalf of M/s. Green Gateway Leisure Limited (hereinafter referred as the "Corporate Debtor") from the Creditor.

The brief facts leading to the present application is as under: -

2. The Corporate Debtor Company M/s. Green Gateway Leisure Private Limited was admitted under Corporate Insolvency Resolution Process by this Tribunal vide Order dated 15.10.2020, pursuant to an application filed by the Union Bank of India under Section 7 of the I&B Code,2016. The Corporate Debtor was incorporated for the purpose of development of a hotel at Bekal, Kasaragod. The land comprising 55.43 acres was acquired by Bekal Resorts Development Corporation Limited (BRDC), a Kerala Government undertaking and leased in favour of the Corporate Debtor. The licence for development of the land was originally granted by BRDC in favour of M/s. AIR Travel Enterprises India Ltd (Air Travel), parent company of the Corporate Debtor, which was holding more than 51% shareholding in the Corporate Debtor at that point of time. Since, the Corporate Debtor was incorporated for implementation of the resort project, BRDC transferred the licence in favour of the Corporate Debtor on 16.10.2010.
3. In the application it is stated that for the implementation of the said project, the Corporate Debtor availed credit facilities from the Applicant Bank. Applicant Bank sanctioned a credit facility of Rupees 67,64,050 (Rupees Sixty-Seven Lakhs Sixty-Four Thousand and Fifty Only) on 14.01.2010

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based on the acceptance of the conditions of the said sanction by the Corporate Debtor and guarantors including respondent herein, the applicant entered into a Term Loan Agreement with the Corporate Debtor. As a security towards the said facility, Respondent Guarantor executed a deed of guarantee for overall limit in favour of SBI on 14.01.2010.

4. It is also stated that based on further request from the Corporate Debtor, the applicant agreed to revalidate the term loan by increasing the limit by further Rupees 20 Crores on 24.02.2010 on the condition that Corporate Debtor shall give paripassu first charge on the fixed assets and directors including the respondent herein shall execute personal guarantees. This additional facilities was granted considering Rupees 26 Crores net worth of the guarantors. Followed by the sanction, a supplemental agreement for loan increasing the Term Loan from Rs.67,64,050/- to Rs. 20,67,64,050/- (Rupees Twenty Crore Sixty-Four Lakh Sixty-Four Thousand and Fifty Only) was made on 27.03.2010 and respondent herein jointly with other director Mr. E.M Najeeb has executed a supplementary deed of guarantee for modifying the guarantee from Rs.67,64,050 to Rs. 20,67,64,050/- in favour of Applicant.
5. It is also stated that the applicant sanctioned another credit facility of Rupees 20 Crores to the Corporate Debtor on 20.05.2010 which also includes the personal guarantee of the respondent among other securities including paripassu first charge in the fixed assets and guarantee of other directors. Pursuant to the acceptance of the said sanction letter by the Corporate Debtor and directors, the applicant (formerly SBT) has entered into a term loan agreement with the Corporate Debtor on 09.06.2010. The respondent herein

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has executed Deed of Guarantee in favour of SBT on 09.06.2010 agreeing to guarantee the repayment of the said credit facilities. The SBT further sanctioned a term loan of Rupees.8 Crores on 09.02.2015. For this also the Corporate Debtor has executed a separate Term Loan agreement on 20.02.2015 and the Respondent has executed a deed of guarantee in favour of SBT towards the said additional facility of Rupees 8 Crores.

6. The Corporate Debtor and the guarantors including Respondent herein have jointly executed a revival letter on 16.03.2013 and 10.03.2016 in favour of the applicant acknowledging the execution of all loan documents and guarantee agreements for the overall limit of Rs.20,67,64,050/-. Similarly, the revival letters were also executed in favour of SBT on 30.03.2013 and 04.02.2016. In view of the default committed by the Corporate Debtor in the repayment of credit facilities, the accounts of the Corporate Debtor were declared as NPA on 28.06.2017, 29.06.2017 and on 24.07.2017. Applicant has issued notice to the Corporate Debtor and Guarantors for repayment/regularization of the account. However, the Corporate Debtor requested for additional facilities for completing the project and regularizing the account, to which the Creditor/Applicant did not agree to. Since, the Corporate Debtor failed to repay the debt, the Applicant jointly with other banks have issued notice under Section 13(2) of the SARFAESI Act on 29.12.2017 to repay the due of applicant Rs.53,01,79, 190/- within 60 days. The Creditor has also issued notice under Section 13(2) of the SARFAESI Act to the respondent by invoking the personal guarantees. The Creditor has taken possession of the secured asset on 15.05.2018. The Creditor jointly with other lenders have also filed OA.417 of 2018 on 24.07.2018 before the Debts Recovery Tribunal for

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recovery of the due from the Corporate Debtor and the Personal Guarantors including the respondent herein, which is pending consideration. On 30.09.2019, based on the request of the Corporate Debtor, the Creditor granted an OTS Scheme for Rs.38,14,49,303/-. However, the Corporate Debtor failed to comply with the OTS Scheme and hence OTS could not be materialized. The outstanding dues of the Corporate Debtor as on 15.10.2020 is Rupees 72,63,09,421. Due to non-payment of this amount the Applicant has filed this application for initiation of Insolvency Resolution Process against the Guarantor under Section 95(1) of I&B Code,2016. The applicant stated that they have issued demand notice to the Respondent on 17.11.2020 under Rule 7(1) of the Personal Guarantors Insolvency Rules, 2019. The demand notice was delivered to the Respondent on 21.11.2020, to which he has replied vide letter dated 30.11.2010, refusing to make any payment towards the debt stating the reason that he has not executed any loan documents and deed of guarantees and all the signatures in the documents executed were forged one. However, this submission was refuted by the Applicant stating that the respondent availed the credit facilities from SB1, SBT, Union Bank of India and Dhanlaxmi Bank being the Director of the Corporate Debtor and the Respondent's submission that the documents are forged cannot be accepted.

7. The Applicant Bank invoked the personal guarantee of the respondent on 29.12.2017.
8. On presentation of the application by the Applicant/Financial Creditor, this Tribunal vide order dated 06<sup>th</sup> October 2021 appointed **Mr. Kizhakkekara Kuriakose Jose**, as Resolution Professional directing him to file report under

Section 99 of Insolvency and Bankruptcy Code, 2016. The Resolution Professional has filed the report recommending the admission of the application filed under Section 95 of IBC, 2016. The grounds for admission of the application as per the Report are as follows: -

- (i) Debt owed by M/s Green Gateway Leisure Ltd to the applicant State Bank of India is Rs.72,63,09,421/- as evidenced by the certified copy of the account statement. Mr Sahadulla M.I. had extended personal guarantee as evidenced by the deed of guarantees submitted along with the application. The applicant has invoked the personal guarantee against Mr Sahadulla M.I. by issuing notice under Section 13(2) of the SARFAESI Act on 29.12.2017 directing him to pay the amount within 60 days from the notice. However, the personal guarantor failed to repay the amount in default within 60 days from the issue of the demand notice. Hence the debt owed by Mr Sahadulla M.I. to the applicant is Rs 72,63,09,421/- This amount is not disputed by the Corporate Debtor M/s. Green Gateway Leisure Ltd. or by the guarantor Mr. Sahadulla M.I. and hence the requirement under Section 95(4)(a) is satisfied.
- (ii) Demand notice dated 17.11.2020 issued 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 was delivered on 21.11.2020 as evidenced by India Postal Track Consignment report annexed to the application. Sahadulla M.I. had filed a reply dated 30.11.2020 through a counsel disputing the liability stating various reasons in the reply. No

repayment has been made within fourteen days of receipt of notice satisfying the requirement of Section 95(4)(b)

- (iii) The applicant State Bank of India have provided the copy of the Account Statement of the Corporate Debtor M/s. Green Gateway Leisure Ltd. with certificate issued under Banker Book of Evidence Act. It is also confirmed by State Bank of India that no further payment was received either from M/s. Green Gateway Leisure Ltd. or from Mr. Sahadulla M.I., thus, meeting the requirement set out in 95(4)(c).
- (iv) The Applicant State Bank of India have served a copy of the application to Mr. Sahadulla M.I. and M/s. Green Gateway Leisure Ltd. as evidenced by affidavit of proof of service and proof of service.
- (v) The application was presented in Form C along with a fee of Two Thousand rupees as prescribed under Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules 2019. Receipt from [Bharatkosh.gov.in](http://Bharatkosh.gov.in) was submitted as proof of payment of fees section 95(7).

**Submission by the Respondent/ Personal Guarantor**

- 9. The Respondent/ Guarantor filed a counter/reply statement and stated that the Resolution Professional simply narrated about the transactions in between the Creditor and the Corporate Debtor incorporating the copies of the statement of accounts of the transaction in between the Creditor and Corporate Debtor and has recorded his findings which are totally erroneous with respect to this Respondent who is only a Personal Guarantor. It is stated that Section 99 itself is incorporated with the noble intention to protect and safeguard the

interests of the personal guarantors by affording them an opportunity, which includes whether or not he/they can be proceeded against in the status of personal guarantor. Such an opportunity was totally denied to him and the Resolution Professional was simply seeking the proof of discharge.

10. It is also stated that the respondent was all along seeking the production of the deed of guarantees before this Tribunal for getting expert opinion regarding the forgery and have even gone to the extent of filing IA(IBC) 49/KOB/2021, but the Resolution Professional in his report stated that he had gone through the deed of guarantees executed by the Respondent which were produced along with the application.

11. It is further stated that the Respondent/Personal Guarantor had disputed the execution of documents making him liable of a personal guarantor, from 26.02.2018 onwards and the documents produced by the Respondent/Personal Guarantor will make it clear that there is a pending dispute with respect to the execution of documents before the Debts Recovery Tribunal from 2019 onwards, by filing reply to IA No. 1405/2019 before DRT seeking production of original records by the creditor for sending the same for expert opinion.

12. It is also stated that there is no resolution process live/pending against the Corporate Debtor in any of the National Company Law Tribunals/High Courts. The applicant herein has spared the Corporate Debtor and is proceeding against the Respondent with an ulterior motive picturizing him as a personal guarantor, which is impermissible under law. This major anomaly is being suppressed from the judicial vicinity by the Resolution Professional.



**FINDINGS**

13. We have heard the learned counsel for both the parties at length and perused the entire case records/documents. We have also gone through the report dated 22.10.2021 filed by the Resolution Professional.
14. With regard to the averment of forgery of signature of the Respondent and filing documents before the Applicant, the learned counsel for the Respondent stated that the Respondent has not initiated any action against the person who forged his signature by filing a complaint before any competent authority. Hence, we presumed that the averment of forgery is only a contention raised by him to escape from the clutches of admission of this application and initiate CIRP against him.
15. On-going through the averments in the IBA, the reply of Respondents after the report of the Resolution Professional as also the report of Resolution Professional narrated above, we are of the considered opinion that this is a fit case for admission and proceed against the Personal Guarantor/ Respondent and initiate Corporate Insolvency Resolution Process. It is also seen from the report of Resolution Professional that he has not recommended for a negotiation between the parties for arriving at an amicable settlement for repayment. Hence, **we admit IBA/42/KOB/2020** filed under the provisions of Section 95 of IBC, 2016 under section 100 of the IBC, 2016 and initiate Insolvency Resolution Process against the Respondent/Personal Guarantor and moratorium in relation to all the debts is declared, from today i.e. date of admission of the application and shall cease to have effect at the end of the period of 180 days, or this Tribunal passes order on the

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repayment plan under Section 114 whichever is earlier as provided under Sec 101 of IBC, 2016. During the moratorium period;

- a) Any pending legal action or proceeding 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; and
- c) The debtor shall not transfer, alienate, encumber, or dispose of any of his assets or his legal rights or beneficial interest therein;
- d) The provisions of this section shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

16. The Resolution Professional viz., **Mr. Kizhakkekara Kuriakose Jose**, having **Registration No: IBBI/IPA-001/IP-P00445/2017-2018/10788**, office at **K.K Jose & Associates, Yenvee Complex, Temple Road, Aluva -683101** [e-mail id – [kkjoseca@gmail.com](mailto:kkjoseca@gmail.com)] who was appointed when the Section 97 application was allowed vide Order dated 06.10.2021, is directed to cause a public notice published on behalf of the Adjudicating Authority within 7 days of passing this Order on the website of the NCLT Kochi Bench, inviting claims from all Creditors, within 21 days of such issue. The notice under Sub-Section (1) of Section 102(2) shall include: -

- (a) details of the order admitting the application;
- (b) particulars of the resolution professional with whom the claims are to be registered; and
- (c) the last date for submission of claims.

17. The publication of notice shall be made in two newspapers, one in English and other in Vernacular which have wide circulation in the State where the Corporate Debtor and Personal Guarantor resides. The Resolution

Professional shall furnish two spare copies of the notice to the Registry for the record.

18. The Resolution Professional in exercise of the powers conferred under Section 104 shall prepare a list of creditors on the basis of a) the information disclosed in the application filed by the debtor under Sections 94 or 95, as the case may be; and b) claims received by the Resolution Professional under Section 102 within 30 days from the date of the notice. The debtor shall prepare a repayment plan under Section 105, in consultation with the Resolution Professional, containing a proposal to the Creditors for restructuring of his debts or affairs. The repayment plan may authorize or require the Resolution Professional to: -

- (a) carry on the debtor's business or trade on his behalf or in his name; or
- (b) realise the assets of the debtor; or
- (c) administer or dispose of any funds of the debtor.

The repayment plan shall include the following, namely; -

- (a) justification for preparation of such repayment plan and reasons on the basis of which the creditors may agree upon the plan;
- (b) provision for payment of fee to the Resolution Professional;
- (c) such other matters as may be specified.

19. The Resolution Professional shall submit the repayment plan along with his report on the plan to this Authority within a period of 21 days from the last date of submission of claims, as provided under Section 106.

20. In case the Resolution Professional recommends that a meeting of the creditors is not required to be called, he shall record the reasons therefor. If the Resolution Professional is of the opinion that a meeting of the creditors should be summoned, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-

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Section (1) of Section 106 of IBC, 2016, for which at least 14 days' notice to the creditors [as per the list prepared] shall be issued by all modes. Such notice must contain the details as provided under the provisions of Section 107 of IBC, 2016.

21. The meeting of the creditors shall be conducted in accordance with Sections 108, 109, 110 & 111 of IBC, 2016. The Resolution Professional shall prepare a report of the meeting of the creditors on repayment plan with all details as provided under Section 112 of IBC, 2016 and submit the same to this Tribunal, copies of which shall be provided to the Debtor and the Creditors. It is made clear that the Resolution Professional shall perform his functions and duties in compliance with the Code of Conduct provided under Section 208 of IBC, 2016.

22. The Resolution Professional shall submit his periodic reports before this Tribunal, as per rules.

Dated this the 21st day of January, 2022

Sd/-  
**(Shyam Babu Gautam)**  
**Member (Technical)**

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

Rajasree