

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

CP(IBC)/14/KOB/2024

AND

CP(IBC)/15/KOB/2024

(Under Section 95(1) of the IBC, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019)

CP(IBC)/14/KOB/2024

In the matter of:

Mr. Basheer Ahamad V.K.

Memo of Parties:

The Federal Bank Limited, Loan Collection and Recovery Division, Federal Towers, Marine Drive, Kochi-682 031.

... Petitioner/Creditor.

-Vs-

Mr. Basheer Ahamad V.K., D4, West Rock Apartments, Pachalam, Ernakulam, Kerala- 682 012.

...Personal Guarantor.

CP(IBC)/15/KOB/2024

In the matter of:

Mr. Arun Kumar K.

Memo of parties:

The Federal Bank Limited, Loan Collection and Recovery Division, Federal Towers, Marine Drive, Kochi-682 031.

... Petitioner/Creditor.

-Vs-

Mr. Arun Kumar K., Apartment No. 1108, Sunny Palace, Changampuzha Samadhi Road, Edappally, Kochi- 682 024.

... Personal Guarantor.

Order delivered on: 19.04.2024

Coram:

Hon'ble Member (Technical)

Shyam Babu Gautam

Hon'ble Member (Judicial)

TMT. Justice (Retd.) T. Krishna Valli

Appearances:

CP(IBC)/14/KOB/2024

For the Petitioner/Creditor

: Mr. Allen Thomas Joseph, PCS.

CP(IBC)/15/KOB/2024

For the Petitioner/Creditor

: Mr. Reuben George Jospeh, PCS.

ORDER

These petitions were filed on 26.03.2024 by the Petitioner/Creditor, The Federal Bank Limited, (hereinafter referred to as '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 against Mr. Basheer Ahamad V.K. and Mr. Arun Kumar K. Personal Guarantors of the Corporate Debtor M/s. Mir Realtors Private Limited (hereinafter referred to as "Corporate Debtor"), for initiating the Insolvency Resolution Process against them.

2. The facts as narrated in the Petitions and explained by the Petitioners/Creditors are summarized hereunder:
 - i. The Petitioner had sanctioned a loan of Rs. 10,00,00,000 (Rupees Ten Crores only) on 6th March 2015 to Mir Realtors Private Limited {hereinafter referred to as the 'Corporate Debtor '} for the construction and completion of the project named 'Haritham" at Thiruvananthapuram. The board of directors of the Corporate Debtor at its meeting held on 03rd March 2015 passed a resolution for acceptance of the sanctioned loan and authorised the directors to enter into a term loan agreement. Accordingly. the Corporate

Debtor entered into a term loan agreement dated 06th March 2015 which was executed by Mr. Basheer Ahamad V.K. and Mr. Arun Kumar K. in their capacity of director and managing director respectively of the Corporate Debtor. The Petitioner disbursed an amount of Rs. 9,50,01,000/- multiple tranches between 06th March 2015 and 14th July 2015. The Respondents executed an Agreement for Guarantee on 06th March 2015 in favour of the Petitioner, guaranteeing the repayment of all dues payable by the Corporate Debtor to the Petitioner concerning the loan amount, interest thereon and all costs and expenses. The Respondents by executing a Deed of Personal Guarantee in respect of the debt owed by the Corporate Debtor have stepped into its shoes and are liable for the debt owed by the Corporate Debtor.

ii. The term loan was granted to the Corporate Debtor against the mortgage of the following immovable properties:

a) Land admeasuring 35.21 ares of land with building in Karakulam Village, Nedumangadu Taluk. Thiruvananthapuram is owned by Mir Realtors Private Limited.

b) Land admeasuring 148.73 ares of land in Kiraloor Village, Talappilly Taluk, Thrissur owned by Mr. Chithrabhanu M.S.

c) Additional charge on four apartments along with an undivided share in 83.09 cents of land in Prakriti-Greens. Thiruvananthapuram owned by Mr. Arun Kumar K.

d) Additional charge on 0.366 ares undivided share in the landed property measuring 43.92 ares together with an apartment in Sunny Palace- II, Edapally, Cochin owned by Ms. Binu Joseph Kanappilly.

iii. It is stated that apart from the term loan agreement and the agreement of guarantee, the Corporate Debtor and the owners of the mortgaged properties executed several other documents with the Petitioner such as demand promissory note and letter evidencing deposit of title deeds. The directors of the Corporate Debtor stood as guarantors in their capacity and executed guarantee agreements in favour of the Petitioner. The Corporate Guarantors/Respondents also stood as Guarantors in their capacity and executed an agreement of guarantee in favour of the Petitioner. The Corporate Debtor had availed the aforementioned loan on 06th March 2015 and the account was opened in the books of the Petitioner/Creditor.

- iv. The IBA/11/KOB/2020 for CIRP filed by the Creditor/Petitioner against the Corporate Debtor was admitted by this Tribunal vide order dated 16.11.2021. The CIRP was not successful and culminated in an order of liquidation by this Tribunal on 21st June 2023. It is further stated that as on 18th January 2024, an amount of Rs. 17,60,63,942.94 (including interest and charges) is due from the Personal Guarantors/Respondents. By the Agreement of Guarantee dated 06th March 2015 executed by the Respondents in favour of the Creditor/Petitioner. The amounts due from the Corporate Debtor as well as the Personal Guarantors are evidenced by the records of the information utility i.e. NeSL.
- v. The Creditor/Petitioner served a demand notice in Form B on the Personal Guarantors/Respondents on 18th January 2024. The Personal Guarantors have not remitted any amount against the amount demanded.

FINDINGS:

3. We have heard the learned PCS Mr Allen Thomas Joseph for CP(IBC)/14/KOB/2024 and Mr. Reuben George Joseph for CP(IBC)/15/KOB/2024 and perused the documents appended with the case records. In this connection, it is profitable to quote Section 95 of I&B Code,2016: -

“(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.”

4. In view of the above provision and that the Creditor has complied with Section 95(4) quoted above and also that the demand notice dated **18.01.2024** was sent to the Personal Guarantors, however, the Personal Guarantors failed to make the payment, we have concluded that there is a default on the part of the Personal Guarantors 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 **The Federal Bank Limited.** against Mr. Basheer Ahamad V.K. and Mr. Arun Kumar K., **Personal Guarantors** of the Corporate

Debtor **M/s. Mir Realtors Private Limited** 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 **CP(IBC)/14/KOB/2024** filed through Resolution Professional **Mr. Allen Thomas Joseph**, an Insolvency Resolution Professional having **Registration No: IBBI/IPA-00/IPP-02729/2022-2023/14207**, office at 37/2038, 1st Floor, Muttathil Lane, Kadavanthra, Cochin- 682 020 and **CP(IBC)/15/KOB/2024**, filed through Resolution Professional **Mr. Reuben George Joseph**, an Insolvency Resolution

Professional having **Registration No: IBBI/IPA-001/IP-P02134/2020-2021** office at 37/2038, 1st Floor, Muttathil Lane, Kadavanthra, Cochin- 682 020, they are appointed as Resolution Professionals to carry out functions as mentioned under the Insolvency and Bankruptcy Code, 2016. The fee payable to the Resolution Professionals 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 Petitioner/Creditor to the Resolution Professionals immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).
- vi. The Resolution Professionals, shall exercise all the powers as enumerated under Section 99 of the Code read with Rules made thereunder. They are directed to make the recommendations with reasons in writing for acceptance or rejection of this Petition within ten days from the date of receipt of this order, as envisaged under the provisions of Section 99 of the Code. The Resolution Professionals 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.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

CP(IBC)/14/KOB/2024
In re: The Federal Bank Limited. Vs. Mr. Basheer Ahamad V.K.

CP(IBC)/15/KOB/2024
The Federal Bank Limited Vs. Mr. Arun Kumar K.

vii. The Registry is directed to immediately communicate this order to the Creditor, Personal Guarantors, Corporate Debtor and the Resolution Professionals by way of email. The Registry shall place a compliance report of this direction in this file.

viii. List the above Company Petitions for further proceedings on 22.05.2024.

SHYAM BABU GAUTAM
(MEMBER TECHNICAL)

T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this the 19th day of April, 2024.

Rajasree R. Nair/ LRA