

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

CP(IBC)/24/KOB/2023

AND

CP(IBC)/25/KOB/2023

(Under Section 95 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)/24/KOB/2023

In the matter of:

Mrs. Meenakshy C.S.

Memo of Parties:

The South Indian Bank Ltd., Regd.
Office: SIB, House, T.B. Road, Mission
Quarters, Thrissur, Kerala- 680 001
Branch Office: Thoppumpady
Represented by Branch Manager.

... Petitioner/Creditor.

-Vs-

Mrs. Meenakshy C.S., W/o Krishnan
Iyre M., Chirangara Puthen Madom,
K.H. Iyer Road, Perumbavoor,
Ernakulam- 683 542. Email:-
meenakshyiyer@gmail.com.

...Personal Guarantor.

CP(IBC)/25/KOB/2023

In the matter of:

Mrs. Sathi Kumari Mohankumar.

Memo of parties:

The South Indian Bank Ltd., Regd.
Office: SIB, House, T.B. Road, Mission
Quarters, Thrissur, Kerala- 680 001
Branch Office: Thoppumpady
Represented by Branch Manager.

... Petitioner/Creditor.

-Vs-

Ms. Sathi Kumari Mohankumar, W/o.
Mohankumar, Aseerwad, Vennala P.O.,
Ernakulam- 682 028. Email:-
sathykumari@gmail.com.

... Personal Guarantor.

Order delivered on: 08.02.2024

Coram:

Hon'ble Member (Technical)

Shyam Babu Gautam

Hon'ble Member (Judicial)

TMT. Justice (Retd.) T. Krishna Valli

Appearances:

For the Petitioner/Creditor : Mr. Sojan James, Adv.

For the Personal Guarantor : Mr. Issac Thomas, Adv.

ORDER

These Petitions were filed on 13.06.2023 by the Petitioner/Creditor, The South Indian Bank Ltd., (hereinafter referred to as 'Creditor') under Section 95 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 Mrs. Meenakshy C.S. and Mrs. Sathi Kumari Mohankumar Personal Guarantors of the Corporate Debtor M/s. Tanish My Zone Super Markets India Limited (hereinafter referred to as "Corporate Debtor'), for initiating the Insolvency Resolution Process against them.

2. The facts as narrated in the application and explained by the Petitioner/Creditor are summarized hereunder:
 - i. The Corporate Debtor approached the South Indian Bank (Applicant) for financial assistance for setting up a Super

Market at Chalikkavattom, Ernakulam. A Cash Credit Overdraft Loan (CCOL) Account No. 0118083000051039 for an amount of Rs. 40,00,000/-. Term Loan for an amount of Rs. 80,00,000/-, Rs. 24,49,000/- and Rs. 43,00,000/- were also sanctioned. Together the company availed an amount of Rs. 2,16,49,000/- from the bank. The sanction was conveyed vide letter of Intent dated 02.08.2019, 17.09.2019 and 24.10.2020 respectively. The Corporate Debtor created the following securities in favour of the Applicant.

- a) Hypothecation of all the movable assets of the borrower, including stock-in-trade, stock of raw materials, stock in process, finished goods, and goods of the borrower, all the present and future actionable claims and other movable property, and all other assets acquired /to be acquired by the borrower under the project/ scheme.

- b) Hypothecation of machinery/equipment of the coconut oil extraction acquired utilizing the loan amount from M/s. Essar Technis or such other vendors and kept the premises of the borrower company or such other places, which was created on 02.08.2019.

c) Equitable Mortgage of the immovable properties, admeasuring 12.54 Ares (8.73 ares +3.81 ares) along with other constructions, improvements, easement rights exiting and appurtenant thereon situated in old Sy No. 6920/31, 6920/9-32, 6920/9-34, 713/1, 7135/4,6,7,14 Re-Sy No.2893/3 and 225/86 within Kollam West Village, Kollam Taluk, Kollam District and owned by Meena Kumari more fully described in Registered Will having Document No. 83/2001 dated 12.10.2001 of sub Registrar office- Kollam which was created on 03.08.2019.

d) The Personal Guarantee was agreed upon by Ms. Devi Kalesh, Mrs. Meenakshy C.S., Mrs. Sathikumari Mohankumar and Ms. Shyama Shinu.

ii. The Creditor stated that the said loans were disbursed to the Corporate Debtor account on various dates between 02.08.2019 to 02.12.2020 as per the terms agreed between the parties. The said term loans were to be repaid over monthly installments after a moratorium of 12 months from the date of the first disbursement of the loan. In terms of the

Loan agreement executed by the Corporate Debtor and Financial Creditor, interest is payable at floating rates at 0.25% above SIB's prime lending rate (PLR) raising or falling therewith with monthly rests. The present rate of interest is 10.20 % per annum.

- iii. It is stated that in terms of the said agreement, the Corporate Debtor was required to pay interest, further interest, on the principal amount of the said loan outstanding from time to time monthly rests. The first such payment of installment/ interest fell due on 06.10.2021. The payments of installments/ interests fallen due up to 06.08.2021 were paid by the Corporate Debtor regularly.
- iv. The Corporate Debtor had completely stopped making payments towards the interest and principal repayment and the account of the Corporate Debtor was declared as NPA on 05.12.2021 in terms of the extant guidelines of the Reserve Bank of India. The Applicant finally recalled the entire loan facility on 24.12.2021.
- v. According to the recall notice dated 24.12.2021 the SIB declared that the entire principal amount of the said loan

together with interest, further interest, penal interest and all other monies due, aggregating to Rs.1,48,17,216.01/- have become immediately due and payable by the Borrower to SIB.

vi. Demand notice dated 10.02.2022 under Section 13(2) of SARFAESI Act, 2002 was issued demanding the Corporate Debtor to pay a sum of Rs.1,50,92,825.32/- as on 09.02.2022. The Corporate Debtor failed to pay the amount. However, despite all this the Corporate Debtor had not affected any payment in favour of the Creditor. Since the Corporate Debtor was unable to perform its repayment obligations towards the financial creditors, the applicant herein was constrained to invoke the personal guarantee of Personal Guarantors vide their guarantee invocation letter dated 24.12.2021 calling upon the Guarantors to pay the outstanding dues of the Corporate Debtor, M/s Tanish My Zone Super Markets India. Ltd.

vii. The Creditor had accordingly issued a Form B demand notice dated 28.04.2022 demanding the Personal Guarantors to pay Rs. 1,55,20,329.42/- together with interest, penal interest & cost and charges, etc.

3. On 30.10.2023 the Personal Guarantors filed their reply statement and stated that the present proceedings had been initiated without intimating these Personal Guarantors about the 'loan recall' and without serving a copy of the Form-B Notice.
4. It is stated that the Deed of Guarantee, the terms of the loan have been altered without informing and without consent of the Personal Guarantors. It is further stated that the variance to the terms of the credit facility was not intimated to these Personal Guarantors therefore the Personal Guarantors are discharged of all liability related to the Deed of Guarantee.
5. It is stated that no proceedings are permissible against Independent Guarantors of the Directors or Promoters of a Company.
6. On 02.01.2024 filed its rejoinder and stated that the Creditor/Petitioner issued Form B Demand Notices dated 28.04.2022 demanding the Personal Guarantors to pay Rs. 1,55,20,329.42/- together with interest, penal interest, cost, and charges. It is further stated that the Form B Notice was refused by Mrs. Sathi Kumari Mohankumar. It is also stated that the Form B Notice was served to Mrs. Meenakshy C.S. and the copy of the acknowledgment card is annexed as Annexure A49 in the rejoinder of CP(IBC)/24/KOB/2023.

7. It is stated that the Personal Guarantors are the Directors of the Corporate Debtor and had availed a loan facility from the Creditor after executing proper guarantee agreements at the time of availing the loan facility from the Creditor and cannot turn around and raise contentions that the subsequent renewal not executed by the Personal Guarantors.

FINDINGS:

8. We have heard the learned counsel for both parties 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.”

9. 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 **28.04.2022** 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 Company 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 **The South Indian Bank Ltd.** against Mrs. Meenakshy C.S. and Mrs. Sathi Kumari Mohankumar, **Personal Guarantors** of the Corporate Debtor **M/s. Tanish My Zone Supermarkets India 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 Company Petitions 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 the Creditor suggested the name of Resolution Professional Mr. **Jasin Jose** an Insolvency Resolution Professional having **Registration No: IBBI/IPA-001/IP-P00695/2017-2018/11225**, office at Ponmattom, Madasserry, Mookanoor, Ernakulam- 683 577 is appointed as the Resolution Professional, to carry out functions as mentioned under the Insolvency and Bankruptcy Code, 2016. He has produced the Form B, authorization for Assignment and also

Form A, written consent to act as RP. 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.

- v. That this Bench also directs that an advance payment of **Rs.2,00,000 (Rupees Two Lakhs only)** be paid by the Applicant/Creditor to the Resolution Professional (RP) immediately to initiate the process which shall be adjusted towards the fee and expenses payable to the Resolution Professional (RP).
- vi. 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 this Application 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 Creditor as soon as the same is filed before this Adjudicating Authority.

vii. The Registry is directed to immediately communicate this order to the Creditor, 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.

viii. List the above Company Petitions for further proceedings on 01.03.2024.

**SHYAM BABU GAUTAM
(MEMBER TECHNICAL)**

**T KRISHNA VALLI
(MEMBER JUDICIAL)**

Signed on this the 08th day of February, 2024.

Rajasree R. Nair/ LRA