

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

**CP(IBC)/51/KOB/2023**

*(Under Section 94(1) of the IBC, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019)*

**In the matter of:**

Mr. Tenny Jose.

**Memo of Parties:**

Mr. Tenny Jose, residing at Flat No. 3231, 23<sup>rd</sup> Floor, Topaz Sobha City, Thrissur, 680 020.

**... Petitioner/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 : Mr. C.J. Davis, PCS.

**ORDER**

**Per: Shyam Babu Gautam Member (Technical)**

1. Under consideration is Petition No. CP(IBC)/51/KOB/2023 filed under Section 94(1) of the IBC, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The relief sought is to initiate a Corporate Insolvency Resolution Process (hereinafter referred to as the CIR Process") against the Personal Guarantor of M/s. Tenny Jose Limited (Corporate Debtor) for the default amount of Rs. 73,77,18,785.56/- (Rupees Seventy-Three Crore Seventy-Seven Lakh Eighteen Thousand Seven Hundred Eighty-Five Rupees and Fifty-Six Paise Only) in respect of credit facility availed from the various Banks.
2. The facts as narrated in the application and explained by the Applicant are summarized hereunder:
  - i. The Petitioner/Personal Guarantor promoted M/s. Tenny Jose Limited ("Corporate Debtor") is a family-owned, closely held, public, unlisted company incorporated under the Companies Act, 1956, on 11.10.2011. The Corporate Debtor was engaged in the business of paper products, building materials, roofing structures, and steel products. The Corporate Debtor is also a

small and medium enterprise as per the provisions of the Micro, Small and Medium Enterprises Development Act, 2006.

- ii. During the course of its business, Corporate Debtor availed working capital credit facilities from the State Bank of India (“SBI”) and South Indian Bank (“SIB”), which were revised/reviewed/renewed from time to time by the said financial institutions yearly. The Petitioner/ Personal Guarantor along with his father, wife, and two sons had given Personal Guarantees to SIB and SBI and mortgaged all of the assets belonging to them. Further, a Corporate Guarantee was given by M/s Steel House Private Limited, a company incorporated under the Companies Act which was promoted by the Petitioner.
  
- iii. It is stated that the financial struggles of the Corporate Debtor and the Petitioner started in November 2018, when the Government of India imposed anti-dumping duty to import copier paper from the ASEAN countries. During the period just before that, Corporate Debtor had ventured into a pan India super stockiest arrangement with its principal supplier Asia Pulp and Paper-Indonesia, based on the past 2 years of growth in sales in the South Indian market and also considering the demand for imported copiers in the other regions of India. Based on this new arrangement, the Corporate Debtor had already committed capital and overhead expenses of a long-term and short-term nature. The unexpected imposition of an anti-

dumping duty structure not only prevented the growth plan of Corporate Debtor but also restricted the current import level. The paper industry had to take a big blow during the COVID-19 pandemic period as the demand for paper had fallen below 50% owing to the closure of offices and educational institutions, which are the driving forces of demand. This scenario caused the complete halt of the import business of Corporate Debtor, causing unexpected detention and demurrage charges at the port and severe gross loss in the sale of goods in the hold, transit and warehouse. This has impacted in pushing down Corporate Debtor into a deep financial crisis.

- iv. The loan accounts of the Corporate Debtor were declared as NPA by SBI on 28.06.2021 and by SIB on 23.02.2021.
- v. It is further stated that one of the operational creditors of the Corporate Debtor, M/s Korea Trade Insurance Corporation, initiated a proceeding under section 9 of the Insolvency and Bankruptcy Code 2016 ("Code") for the commencement of Corporate Insolvency Resolution Process ("CIRP") of Corporate Debtor before this Tribunal. This Tribunal vide order dated 21.12.2021 admitted Corporate Debtor into CIRP and subsequently the Corporate Debtor was dissolved by this Tribunal vide order dated 31.10.2023.

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vi. It is further stated that the Petitioner/ Personal Guarantor is aggrieved by the recovery actions initiated by SBI and SIB wherein the reserve price fixed by these banks for the sale of the securities mortgaged by the Petitioner are way lesser than that was offered as part of P G Settlement under the resolution plan submitted by the Petitioner/Personal Guarantor. Further, both banks had rejected One Time Settlement (OTS) proposals made by the Petitioner on multiple occasions. The Petitioner/ Personal Guarantor has no other way but to invoke the provisions of the Code to map in a repayment plan to get back on his feet and contribute to the economy.

3. On 15.01.2024 the Resolution Professional filed IA(IBC)/22/KOB/2024 in CP(IBC)/51/KOB/2023 under Section 99 of IBC, 2016 recommending the admission of the Company Petition filed under Section 94(1) of the IBC, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019. The grounds for admission of the application as per the Report are as follows: -

a) The Petitioner/Personal Guarantor has committed default in repayment of his debts therefore the first requirement as set out under Section 94(1) is satisfied.

- b) All the debts mentioned in the petition are not excluded debts; hence requirement set out under Section 94(3) is satisfied.
- c) The Petitioner/Personal Guarantor is not an undischarged bankrupt, not undergoing a fresh start process, not undergoing an Insolvency Resolution Process or Bankruptcy Process, therefore satisfies the requirement set out under Section 94(4).
- d) No application under Chapter III of IBC, 2016 has been admitted in respect of Petitioner/Personal Guarantor during the period of 12 months preceding the date of submission of this application under Section 94, therefore, satisfies the requirement set out under Section 94(5).
- e) The petition has been duly filled in the prescribed 'Form A' along with the requisite fee satisfies the requirement under Section 94(6).
- f) The Petitioner is eligible under Section 80 for a fresh start process provided under part 3 Chapter II of IBC, 2016.

**FINDINGS: -**

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4. We have heard the matter at length and perused the entire case records/documents. We have gone through the report dated 15.01.2024 filed by the Resolution Professional. In this connection, it is profitable to quote the clause of the Deed of Guarantee dated 23.07.2018 which is as under: -

*“1. This guarantee shall be continuing security for all amounts advanced by the Bank to the Borrower in respect of or under the aforesaid credit facilities as also for all interest costs and other monies which may from time to time become due and remain unpaid to the Bank thereunder and shall not be determined or in any way be affected by any account or accounts opened or to be opened by the Bank becoming nil or coming into credit at any time or from time to time or by reason of the said account or accounts being closed and fresh account or accounts being opened in respect of fresh facilities being granted within the overall limit sanctioned to the Borrower. This guarantee shall be binding on the guarantor(s) and heirs, legal representatives, executors, administrators, successors, assignees etc. The guarantor(s) shall not be released from liability in respect of the credit facilities covered by this guarantee in the event of any omission, delay or default in the presentation of bill or in issue of notice of dishonour on the part of the Bank. This guarantee shall continue in force notwithstanding the discharge of the Borrower by operation of law or death of guarantor(s) and shall cease only on payment of the amount guaranteed hereunder by the guarantor (s).”*

5. On a reading of the above Clause of the agreement, it is seen that the Guarantor has admitted the Deed of Guarantee.
6. On-going through the averments in the Company Petition and the report of the Resolution Professional narrated above, and after

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hearing Mr. C. J. Davis, the Resolution Professional, we are of the considered opinion that it is a fit case for admission and proceedings against the Petitioner/ Personal Guarantor to initiate Corporate Insolvency Resolution Process. It is seen from the report of the Resolution Professional that he has not recommended negotiation between the parties to arrive at an amicable settlement for repayment. Hence, we take the report filed by the Resolution Professional under Section 99 of IBC, 2016. For the reasons stated aforesaid, **we admit CP(IBC)/51/KOB/2023** filed under the provisions of Section 95 of IBC, 2016 and initiate Insolvency Resolution Process against the Petitioner/Personal Guarantor and moratorium 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 the order on the repayment plan under Section 114, whichever is earlier as provided under Section 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.
7. The Resolution Professional viz., **Mr. C J Davis** having Registration Number: IBBI/IPA-003/ICAI-N-00343/2021-2022/13660 office at House No 23/1223, Chandy House, Golden Gate, Rareeram Road, Anchangady, East Fort, Behind Selex Mall, Thrissur, Kerala- 680 005., who was appointed when the Section 97 application was allowed vide Order dated 22.12.2023, 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.
8. 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 Guarantors reside.

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

9. The Resolution Professional in the 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.

10. 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.

11. 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.

12. 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 called, he shall specify the details as provided under Section 106(3) of IBC, 2016. The date of the meeting should not be less than 14 days or more than 28 days from the date of submission of the Report under Sub-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.

13. 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

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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.

14. The Resolution Professional shall submit his periodic reports before this Tribunal, as per rules.
15. Registry is directed to communicate this order to the respective parties through email.
16. Certified copy of the order be issued on request of the parties as per the procedure.
17. File be consigned to records.

**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

**T KRISHNA VALLI**  
**(MEMBER JUDICIAL)**

Signed on this the 08<sup>th</sup> day of February, 2024.

Rajasree R. Nair/LRA