

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

CP (IBC)/24/KOB/2022

*(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)*

In the matter of:

Dhanalaxmi Bank Ltd., 2nd Floor, Karimpanal Arcade, Esat Fort,
Thiruvananthapuram- 695 023;

... Applicant/Creditor

-Versus-

Dr. Bharath Chandran, 773/26/362 Nablakath, Thazhe Mangalam,
RishMangalam, Thiruvananthapuram.

... Respondent/Personal Guarantor

Coram:

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

Parties / Counsel present (through video conference):

For Applicant	:	M/s. Indialaw LLP, Advocates.
For Resolution Professional	:	Mr. Sankar P. Panicker, Adv.
For Respondent	:	Mr. Raghunath Sarangapani, PCS, Mrs. Shiny A., Advocate

Order reserved on: 09.11.2022

Order pronounced on: 22.12.2022

ORDER

1. Under consideration is Petition No. CP(IB)/24/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 Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (Personal Guarantors Insolvency Rules). The relief sought is to initiate a Corporate Insolvency Resolution Process (hereinafter referred as CIR Process") against the Personal Guarantors of M/s. Trivandrum International Health Services Ltd. for the default amount of **Rs. 14,24,90,488/- (Rupees Fourteen Crore Twenty-Four Lakhs Ninety Thousand Four Hundred and Eighty-Eight Only)** in respect of credit facility availed from the Creditor on behalf of M/s. Trivandrum International Health Services Ltd. (hereinafter referred as the "Corporate Debtor").

2. The facts as narrated in the application and explained by the Applicant are summarized hereunder:
 - i. The Applicant Bank has sanctioned Cash Credit Facility of Rs.1 Crore and Term Loan Facility of Rs. 15 Crore to the Corporate Debtor M/s. Trivandrum International Health Services Ltd vide sanction letter dated 30.03.2015 and the Corporate Debtor has executed Master Credit Agreement, Term Loan Agreement and other loan documents for availing the credit facilities. As security towards the grant of credit facilities, the directors of the Corporate Debtor namely, Dr.Ashalatha Nair, Dr. Bharath Chandran C and Shri. P A. Ahamed have executed personal guarantees. In addition to that M/s. Trivandrum Medical Specialty Services Ltd and Dr. K N Pai Heart Foundation, have also executed a Guarantee in favour of the Applicant.
 - ii. Due to failure in the repayment, the accounts of the Corporate Debtor became NPA on 30.05.2016. Hence, the Applicant issued a demand notice on 29.06.2016 and also issued notice under Section 13(2) of the SARFAESI Act on 22.07.2016 demanding an amount of Rs. 8,64,71,256/- against the Corporate Debtor and Personal Guarantors by invoking the personal guarantees.

- iii. In the meantime, a meeting was convened by the Corporate Debtor, Financial Creditor and other lenders in the presence of the Finance Minister to discuss the restructuring of loan facility and repayment of the arrears and a decision was arrived at the meeting to grant reasonable opportunity to the Corporate Debtor to settle the arrears. But the Corporate Debtor continued the default. Hence, the Applicant filed OA No 156/2018 before the DRT on 28.02.2018. Thereupon vide letters dated 06.12.2018, 13.12.2018 and 11.01.2019, the Corporate Debtor submitted a One-Time Settlement (OTS) proposal to settle the dues of Rs.8.15 Cores within 180 days. The Applicant approved the OTS proposal vide sanction letter dated 22.01.2019 and the same was acknowledged by the Corporate Debtor. The Corporate Debtor sought time till 20.02.2019 for payment of 5% advance amount under the OTS Scheme. In terms of the OTS, the liabilities of the Financial Creditor have to be repaid by the Corporate Debtor on 30.06.2019. However, the Corporate Debtor failed to adhere to the terms of OTS and committed default in repayment of the outstanding liabilities. Hence the Applicant initiated CIRP against the Corporate Debtor filing IBA/51/KOB/2019 on 10.12.2019 and this Adjudicating Authority admitted the application on 07.02.2020 and initiated CIRP. The outstanding liabilities of the Corporate Debtor as on the insolvency commencement date of the Corporate Debtor i.e., on 30.11.2019 is Rs.14,24,90,488/-.
- iv. On 09.11.2021 under Section 95(4)(b) of IBC, the Creditor Bank has issued demand notice to the Personal Guarantors. The notice issued to Dr. Bharath Chandran the Respondent herein was delivered on 26.11.2021. The Respondent had neither paid the dues nor sent a reply to the notice.
3. On presentation of the application by the Applicant/Creditor, this Adjudicating Authority vide order dated 05th May 2022 appointed **Mr. Raj Mohan R.**, as Resolution Professional directing him to file report under Section 99 of Insolvency and Bankruptcy Code, 2016. The Resolution

Professional has filed the Report No/118/KOB/2022 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. Trivandrum International Health Services Ltd to the Applicant, Dhanalaxmi Bank Ltd is Rs. 14,24,90,488.00 as evidenced by the certified copy of the statement of Balances as on 30.11.2019 annexed to the application. Dr. Asalatha Nair and Dr. Bharath Chandran had extended personal guarantee dated 31.03.2015 (Rs.16,00,00,000) as evidenced by the deed of guarantee submitted along with the application. The Applicant has invoked a personal guarantee against Dr. Bharath Chandran by issuing a notice on 09.11.2021 directing them to pay the amount in default Within 14 days of receipt of the notice of demand. However, the personal guarantors failed to repay the amount in default within 14 days from the date of receipt of the notice. Hence the debt owed by Dr. Bharath Chandran to the Applicant is Rs. 14,24,90,488.00. The amount is not disputed by the Corporate Debtor, M/s. Trivandrum International Health Services Ltd or by the personal guarantors and hence the requirement under section 95(4)(a) is satisfied.
- (ii) Demand notice dated 09.11.2021 was issued to the personal guarantor, Dr. Bharath Chandran which was delivered on 26.11.2021 as evidenced by India Post Acknowledgement annexed to the application. No repayment has been made within 14 days of receipt of notice satisfying the requirement of Section 95 (4)(b).
- (iii) The Applicant, Dhanalaxmi Bank Ltd has provided me with a copy of the Account statement of the Corporate Debtor, M/s. Trivandrum International Health Services Ltd along with the copy of the application Thus meets the requirement set out in Section 95 (4)(c).

- (iv) The Applicant has served a copy of the application to Dr. Asalatha Nair (Personal Guarantor), Dr. Bharath Chandran (Personal Guarantor) and Shri. P. A. Ahammed (Personal Guarantor) and M/s. Trivandrum International Health Services Ltd (Corporate Debtor) as evidenced by proof of service.
- (v) The Application is submitted in Form C 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 is submitted as proof of payment of fees under Section 95(7).
4. On 17.06.2022 the Respondent filed his reply statement and stated that the Applicant has suppressed material facts having a significant bearing on the outcome of this Petition. He has stated that he has executed a Deed of Guarantee dated 31.03.2015 in consideration of the facility granted by the Applicant to the borrower under a loan agreement for a total amount of Rs. 16,00,00,000/-
5. It is further stated that the Applicant disbursed only an amount of Rs. 8,76,12,971/- including Over Draft as against the sanctioned facility of Rs. 16 Crores. This act of the Applicant resulted in the non-completion of the project for setting up an Oncology division resulting in a loss of anticipated revenue and profit and pushing the Corporate Debtor into Insolvency. It is stated that non-fulfilment of the consideration for which the guarantee was provided by the Applicant makes the Deed of Guarantee unenforceable.
6. It is stated by the Respondent that, the liability if any of the Respondent shall be crystallised upon receipt from the liquidation proceedings of the Corporate Debtor.

FINDINGS

7. We have heard the learned counsel/PCS for both parties at length and perused the entire case records/documents. We have also gone through the report dated 20.05.2022 filed by the Resolution Professional. In this connection, it is profitable to quote Clause 11 and 14 of the Deed of Guarantee which is as under: -

“11. Bank shall have full discretionary power with or without reference or notice or consent of the Guarantors to grant time or other indulgences to or accept or make any composition or arrangement with the Borrower or any persons or persons liable in respect of any indebtedness or liability hereby guaranteed and also vary abstain from, exchange, renew, discharge, release, enforce and deal with the whole and in part and from time to time any bills, notice, mortgages, charges, liens or any securities, obligations or decrees now or hereafter held by the Bank in respect thereof and generally to treat the Guarantors as primarily and severally liable along with the Borrower”

14. The Guarantor hereby consents/s to the Bank for making any variance as it may deem fit in terms of its contract with the Borrower or to their determining, enlarging or varying any credit to the Borrower or their making any composition with the Borrower or promising to give time or agreeing not to sue or to their parting with any security they may hold for the guaranteed debt and accordingly, the Guarantor/s shall not be entitled to claim any of the rights conferred on sureties by Section 133, 134, 135, 139 and 141 of the Indian Contract Act, 1872. ”

8. On a reading of the above Clauses of the Deed of Guarantee, it is seen that the Guarantor has admitted the Deed of Guarantee and the terms agreed therein unconditionally giving consent to the Creditor and to the Borrower to vary the terms of the contract and securities, without admitting it is immaterial whether there is any change or variance in the security or other loan documents. On-going through the averments in the Company Petition and the report of the Resolution Professional narrated above, and after

hearing the learned counsel for the Applicant and the Respondent/ Personal Guarantors, we are of the considered opinion that is a fit case for admission and proceeds against the Respondent/ Personal Guarantor to initiate Corporate Insolvency Resolution Process. It is seen from the report of the Resolution Professional that he has not recommended for negotiation between the parties for arriving at an amicable settlement for repayment. Hence, **we admit CP (IB)/24/KOB/2022** 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 the order on the 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.
9. The Resolution Professional viz., **Mr. Raj Mohan R**, an Insolvency Resolution Professional having **Registration No: IBBI/IPA-001/IP-P-02331/2020-2021/13517**, office at **Rajbhavan, HS 514/12/1 and 175A**, ,

Krishnapuram, 6th street, Ollukkara P. O. ,Thrissur, Kerala- 680 655 [e-mail id – rajmohanip@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.

10. 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.

11. 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.

12. 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.

13. 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-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.

14. 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.

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

Satya Ranjan Prasad
Member (Technical)

P. Mohan Raj
Member (Judicial)

Signed on this 22nd day of December, 2022

Rajasree