

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

IA (IBC)/209/KOB/2024

IN

CP (IBC)/13/KOB/2024

(Under Section 60(5) of IBC, 2016 read with Rule 32 and Rule 11 of NCLT Rules, 2016)

Memo of Parties

M/s. Guruchandrika Builders & Property (P) Limited

represented by its Managing Director,
Mr. Rajeev Vidyadharan alias Rajeev Anchal
Jatayu Earth's Center, Jatayu
Junction, Chadayamangalam, Kollam District,
Kerala - 691534

...Applicant

Versus

1. Dhanlaxmi Bank Limited,

represented by its Manager, Mrs Anuradha
Venkatesh,
Having registered office at
Dhanalaxmi Buildings, Naickanal
Trissur - 680001, Kerala

2. Mr Shawn Jeff Christopher

Chartered Accountant, Jvr Associates,
Wilmount Park, Business Centre, Pallimukku,
Kochi, Ernakulam - 682016.

...Respondents

In the matter of:

Dhanlaxmi Bank Limited : Applicant

Versus

M/s Guruchandrika Builders & : Respondent
Property Private Limited

Order delivered on: 31.07.2024

Coram:

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Shri. Ravichandran Ramasamy

TMT. (Retd.) Justice T Krishna Valli

Appearances:

For the Applicant : Mr. Sidharth A Menon, Advocate

For the Respondents No 1 : Mr.K V Krishnakumar, Advocate

For the Respondents No 2 : Mr. Shawn Jeff Christopher, CA

ORDER

Per: Coram

1. The present application is filed by the Petitioner / Respondent in the main Company Petition, M/s Guruchandrika Builders & Property Private Limited under section 60(5) of IBC, 2016 read with Rule 32 and Rule 11 of NCLT Rules, 2016 for impleading the

2nd Respondent herein as an Additional Respondent in CP(IBC)/13/KOB/2024.

2. The main Company Petition is filed against M/s Guruchandrika Builders & Property Private Limited under section 7 of the Insolvency Bankruptcy Code, 2016 as a co-applicant for a loan extended to M/s Jatayupara Tourism Private Limited.
3. The Petitioner / Respondent no 1 proposed a One-Time Settlement of Rs 3.8 Crores to the bank to settle outstanding credit facilities for M/s Jatayupara Tourism Private Limited, M/s Jatayupara Adventure Tourism Private Limited, and himself. The bank accepted the OTS proposal and forwarded it to the Chartered Accountant/2nd Respondent herein, as ordered by this Tribunal on 13.01.2023 in IA(C/Act)/03/2023 in CP(C/Act)/21/KOB/2020, per the Hon'ble Supreme Court's directions on 02.01.2023 in Civil Appeals No. 9091 and 9367 of 2022. The necessary board resolution was submitted to the bank, and the Chartered Accountant was requested to release funds for the OTS. However, the Chartered Accountant has not approved the release of the funds and submitted that there are sufficient funds to settle the loans as per the OTS. The Petitioner/ Respondent no 1 is ready to repay the loans. Thus, the Chartered Accountant must be made a party to issue the necessary payment directions.
4. We have heard the learned counsel for the Petitioner and the Respondents and carefully perused the materials on record.

Respondent no 1 and Respondent no 2 submitted no objection to this petition. It is to be noted that Respondent no 1 herein filed the main Company Petition (IBC)/13/KOB/2024 under section 7 of the Code. Section 7 of the Code, allows a financial creditor to file an application for initiating the CIRP against a corporate debtor. The essence of such proceedings is summary in nature and hinges on two elements, the existence of financial debt and default by the corporate debtor.

5. The Code does not expressly provide for impleading third parties in petitions filed under Section 7. The primary objective is to assess the debtor-creditor relationship and the occurrence of default. We emphasise the summary nature of Section 7 proceedings and the focus on the existence of financial debt and default, rather than involving third parties or collateral issues.
6. In this case the petitioner stated that for settling the bank loan the Chartered Account/Respondent no 2 herein has not approved the release of the funds. The Chartered Accountant, Respondent No. 2 herein, must comply with the directions as per the order of this Tribunal dated 13.01.2023 in IA(C/Act)/03/2023 in CP(C/Act)/21/KOB/2020.
7. The summary nature of Section 7 proceedings under the Code does not warrant the inclusion of third parties unless it directly impacts the ascertainment of financial debt and default. Hence it is not

necessary to implead the Chartered Accountant for effecting the payment to repay the loan.

8. The necessary steps to ensure compliance with the Tribunal's order dated 13.01.2023 should be followed by the Chartered Accountant if needed.
9. This Application IA(IBC)/209/KOB/2024 is hereby **dismissed** and disposed of accordingly.
10. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and to take necessary steps.
11. Let the certified copy of the order be issued upon compliance with requisite formalities.
12. File be consigned to records.

Sd/-

RAVICHANDRAN RAMASAMY
(MEMBER TECHNICAL)

Sd/-

T KRISHNA VALLI
(MEMBER JUDICIAL)

Signed on this the 31st day of July, 2024.

Krishna /LRA