



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

IA(IBC)/444/KOB/2024

IN

CP(IBC)/26/KOB/2023

(U/s 112 read with Sections 114(1) & 115(2) of the IBC, 2016)

In the matter of:-

Ms Devi Kalesh

MEMO OF PARTIES :-

CA Jasin Jose

Resolution Professional,

IBBI/IPA-001/IP-P00695/2017-2018/11225

Ponmattam Madaserry House,

Mookkannoor P O, Ernakulam,

Kerala, 683577

...Applicant

Coram:

Hon'ble Member (Judicial) : Shri. Jyoti Kumar Tripathi

Hon'ble Member (Technical) : Shri. Ravichandran Ramasamy

Appearances:

For the Applicant : Mr. Akhil Suresh, Advocate

Order pronounced on: 05.11.2024



ORDER

Per Coram

1. This application is filed by CA Jasin Jose, the Resolution Professional for Ms Devi Kalesh, Personal Guarantor to M/s Tanish My Zone Supermarkets India Limited, seeking an order of this Tribunal to take on record the decisions of the meeting of Committee of Creditors under section 112 of IBC, and order Non-submission of Repayment Plan is as good as rejecting the repayment plan under section 114 of IBC, and pass order declaring ~~that~~ creditors are entitled to proceed with bankruptcy.
2. The Insolvency Resolution Process against Ms Devi Kalesh was initiated on 25.06.2024 by an order passed by this Hon'ble Tribunal in CP(IBC)/26/KOB/2023 wherein the Applicant herein was appointed as the Resolution Professional.
3. The Applicant/Resolution Professional made a public announcement of the commencement of the Insolvency Resolution Process on 01.07.2024 and invited claims from creditors. The South Indian Bank Limited, the financial creditor who initiated the Insolvency Resolution Process, submitted their claim and is the sole creditor. The total admitted claim amounts to Rs. 4,64,63,373.09/-.
4. On 09.07.2024 and 27.07.2024, the Applicant/Resolution Professional requested the Personal Guarantor, to provide all the information and requesting assistance in preparing the statement of affairs and submitting a Resolution Plan under Section 105 of the Code. However,



she did not respond or show interest in fulfilling his obligations as a Personal Guarantor.

5. On 12.08.2024, the Resolution Professional held creditors meeting and decided to grant the Personal Guarantor an additional week. The Resolution Professional issued multiple letters to the Personal Guarantor requesting the submission of a repayment plan and statement of affairs. In response the Personal Guarantor send a letter stating that they had discussed a settlement proposal with the bank. Apart from the letter no repayment plan or statement of affairs has been received from the Personal Guarantor.
6. On 23.09.2024, the Committee of Creditors met it was informed that settlement proposal submitted directly to the bank was rejected and, noting the Guarantor's continued failure to submit a repayment plan, advised the Resolution Professional to file an application with the Adjudicating Authority for further directions. Accordingly, Resolution Professional has filed this application which is the report under section 112 of IBC, 2016.
7. The non-filing of the repayment plan causes a similar effect of rejection of the repayment plan under Section 114 as provided under Section 115(2) of the IBC, 2016.
8. Heard the learned counsel for the Applicant/Resolution Professional. This Tribunal on perusal of the report of the Resolution Professional under section 112 observes that no repayment plan has been submitted by Ms Devi Kalesh, the Personal Guarantor to M/s Tanish My Zone Supermarkets India Limited. Section 114(1) of the IBC, 2016



states as follows:

“114. (1) The Adjudicating Authority shall by an order approve or reject the repayment plan on the basis of the report of the meeting of the creditors submitted by the resolution professional under section 112:

Provided that where a meeting of creditors is not summoned, the Adjudicating Authority shall pass an order on the basis of the report prepared by the resolution professional under section 106.

(2) The order of the Adjudicating Authority approving the repayment plan may also provide for directions for implementing the repayment plan.

(3) Where the Adjudicating Authority is of the opinion that the repayment plan requires modification, it may direct the resolution professional to re-convene a meeting of the creditors for reconsidering the repayment plan.”

9. In view of the aforesaid, this Tribunal is of the opinion that since no repayment plan has been made out till date, the possibility of a resolution of debt in the matter appears grim. Therefore, this application is hereby **allowed**.

10. The moratorium declared under section 101 shall cease to have effect from the date of this order.

11. In consequence thereof, the debtors and the creditor shall be entitled



to file an application for bankruptcy under Chapter IV of the Code under Part III.

12. Accordingly, this application, **IA(IBC)/444/KOB/2024 in CP(IBC)/26/KOB/2023**, stands **allowed** and disposed of.

13. The Registry is hereby directed to send e-mail copies of the order forthwith to all the parties and their counsel for information and for taking necessary steps.

14. Let the certified copy of the order be issued upon compliance with requisite formalities.

15. File be consigned to records.

SD/-

RAVICHANDRAN RAMASAMY
(MEMBER TECHNICAL)

SD/-

JYOTI KUMAR TRIPATHI
(MEMBER JUDICIAL)

Signed on this, the 5th day of November, 2024.

Krishna/LRA