



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

**IA(IBC)/117/KOB/2025 IN IA(IBC)/114/KOB/2025
IN
CP(IBC)/24/KOB/2022
&
IA(IBC)/121/KOB/2025 IN IA(IBC)/118/KOB/2025
IN
CP(IBC)/23/KOB/2022
(Under Section 5 of the Limitation Act)**

IA(IBC)/117/KOB/2025

In the matter of:

M/s. Kerala Financial Corporation v Dr. Bharath Chandran

Memo of Parties:

Kerala Financial Corporation,

Vellayambalam, Thiruvananthapuram – 695033

: Applicant/Creditor

Vs.

Dr. Bharath Chandran

Residing at 773/26/362, Nablakath, Thazhe

Mangalam, Rishi Mangalam,

Thiruvananthapuram.

: Respondent/Personal Guarantor

IA(IBC)/121/KOB/2025

In the matter of:

M/s. Kerala Financial Corporation v Dr. Ashalatha Nair

Memo of Parties:



Kerala Financial Corporation,
Vellayambalam, Thiruvananthapuram – 695033

: Applicant/Creditor

Vs.

Dr. Ashalatha Nair

W/o G Bhadran Nair Augraha, 28

Chembakassery Nagar, Kesavadasapuram,
Thiruvananthapuram-695024

: Respondent/Personal Guarantor

Order delivered on: 03.09.2025

Coram:

HON'BLE MEMBER (JUDICIAL) : SHRI. VINAY GOEL

HON'BLE MEMBER (TECHNICAL) : SMT. MADHU SINHA

Appearances:

IA(IBC)/117/KOB/2025

For the Applicant : Mr. Vinod P V, Advocate

For the Respondent : Mr. Liju V Steephen, Advocate

IA(IBC)/121/KOB/2025

For the Applicant : Mr. Vinod P V, Advocate

For the Respondent : Mr. M Sreekumar, Advocate



ORDER

Per: Coram

1. These two applications have been filed by the Kerala Financial Corporation, Applicant/Creditor, seeking condonation of delay in filing applications under Section 123(1) of the Insolvency and Bankruptcy Code, 2016, for initiating bankruptcy proceedings against Dr. Bharath Chandran and Dr. Ashalatha Nair, who had extended personal guarantees for the debt of the same Corporate Debtor, namely Trivandrum International Health Services Limited. As the legal and factual issues in both matters are identical, they have been heard together, and a common order is being passed.
2. The Applicant submits that Dhanlaxmi Bank Ltd. initiated the resolution process against the Respondents, who are the personal guarantors of the Corporate Debtor, pursuant to the order dated 22.12.2022 in application CP(IBC)/23/KOB/2022 and CP(IBC)/24/KOB/2022 filed under Section 95 of the Insolvency and Bankruptcy Code, 2016. Mr. Rajmohan R was appointed as the Resolution Professional. The Applicant filed its claim for an amount of Rs. 66,80,93,213.52/- on 22.12.2022 with the Resolution Professional, and the said claim was admitted. The Applicant is also a member of the Committee of Creditors.
3. It is submitted that during the resolution process, the personal guarantors failed to submit any repayment plan. Consequently, this Adjudicating Authority, vide order dated 21.12.2023 in IA(IBC)/277/KOB/2023 and IA(IBC)/278/KOB/2023, permitted the creditor and/or debtor to file applications for bankruptcy under Section 121 of the Insolvency and Bankruptcy Code, 2016. The Applicant further



submitted that, being one of the creditors whose claim against the personal guarantors has been admitted by the Resolution Professional but remains unresolved in the resolution process, it is therefore entitled to apply for initiating bankruptcy proceedings against the Respondents.

4. The Applicant states that Dhanlaxmi Bank initially filed applications under Section 121(2) of the Insolvency and Bankruptcy Code, 2016, to initiate bankruptcy proceedings against the personal guarantors on 13.03.2024. However, the said applications were subsequently withdrawn on 11.06.2024 without the knowledge of the present Applicant. The Applicant submitted that in accordance with Section 94 of the Code, a moratorium was in effect for a period of 90 days from the date of filing the said applications until their withdrawal. Due to this moratorium, the Applicant was precluded from initiating any legal proceedings during that period and was, therefore, in a position to initiate the bankruptcy process only after the withdrawal of the earlier applications, i.e., on 11.06.2024.
5. It is further stated by the Applicant that the bankruptcy applications filed on 04.03.2025 resulted in a delay of 266 days in filing the applications. This delay was neither intentional nor deliberate but was necessitated by the ongoing sale of assets of the Corporate Debtor, which was in its final stages.
6. The Applicant further submits that this Adjudicating Authority, vide order dated 07.02.2020 in IBA/51/KOB/2019, admitted the Corporate Debtor, Trivandrum International Health Services Limited, into the Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code, 2016. As no Resolution Plan was



approved during the Corporate Insolvency Resolution Process, this Adjudicating Authority, vide order dated 02.06.2022 in IA(IBC)/49/KOB/2022 in IBA/51/KOB/2019, directed the liquidation of the Corporate Debtor. During the liquidation proceedings, the Liquidator admitted a claim of Rs. 61,18,70,317/- filed by the Applicant. An e-auction for the sale of the Corporate Debtor's business as a going concern was conducted by the Liquidator on 06.12.2023. Pursuant to the sale, proceeds were distributed to the Applicant on four occasions: Rs. 79,90,482/- on 24.06.2024, Rs. 8,99,01,050/- on 03.03.2024, Rs. 18,00,384/- on 30.03.2024, and Rs. 91,78,055/- on 16.01.2025, with the last disbursement occurring on 16.01.2025.

7. It is submitted by the Applicant that the proceedings against both the Corporate Debtor and the personal guarantors pertain to the same underlying debt, and the Applicant chose to await the completion of the sale of the Corporate Debtor's assets and the subsequent distribution of proceeds before initiating the bankruptcy application against the personal guarantors. The Applicant's sole intention was to set off the amounts received through the liquidation process against the total debt owed by the personal guarantors and to initiate bankruptcy proceedings only for the balance outstanding. Being a Government of Kerala undertaking, the Applicant also required additional time to obtain the necessary administrative and statutory approvals to proceed with the bankruptcy application against the personal guarantors.
8. The Applicant submitted that once the personal guarantors have undergone the resolution process, the appropriate remedy available to the Applicant is to apply for bankruptcy. This Adjudicating Authority



possesses the jurisdiction to condone the delay in filing the bankruptcy application beyond the prescribed 90-day period.

9. The Respondents stated that the condonation of delay in the bankruptcy application is both legally and factually untenable. Under Section 121(2) of the Insolvency and Bankruptcy Code, 2016, such applications must be filed within three months of the Adjudicating Authority's order. This Adjudicating Authority granted the permission vide order dated 21.12.2023, and the validity period thereof expired on 20.03.2024. However, the application was filed on 04.03.2025, resulting in a delay of 348 days, contrary to the 266 days previously claimed.
10. The Respondents further submitted that M/s. Dhanalaxmi Bank Ltd had earlier filed applications to initiate bankruptcy proceedings under Section 121 of the Code. However, a One-Time Settlement was reached between the personal guarantors and the bank, and accordingly, the application was dismissed as withdrawn by order dated 11.06.2024.
11. The Respondents submitted that the applicant stated the corporate debtor defaulted, resulting in the account being classified as a Non-Performing Asset on 02.08.2015. A demand notice was issued to the Respondents on 16.10.2015, demanding payment by 31.10.2015. Therefore, the date of default and accrual of the right to sue is 31.10.2015. As per Sections 121(3) and 238A of the Insolvency and Bankruptcy Code, 2016, read with Article 137 of the Limitation Act, the application should have been filed within three years, i.e., by 31.10.2018. The Respondents have relied on decisions of the Hon'ble Apex Court, which held that the limitation period for proceedings under the Insolvency and Bankruptcy



Code, 2016, is three years from the date when the 'right to sue' accrues, and that an application filed beyond this period is not maintainable.

12. The Respondent in IA(IBC)/117/KOB/2025 submitted that this principle was established in ***B.K. Educational Services Private Limited v. Parag Gupta and Associates (2018 KHC 6801)***, ***Sagar Sharma and Another v. Phoenix ARC Private Limited and Another (2019 KHC 6989)***, and ***Jignesh Shah and Another v. Union of India and Another (2019 KHC 6967)***. The further reliance is made upon the judgment of the Hon'ble Apex Court in ***Radha Exports (India) Pvt. Ltd. v. K.P. Jayaram and Another (2020 KHC 6513)*** that the burden to prima facie show the existence of a legally recoverable debt, that is, that the debt is not barred by limitation, rests on the Applicant. The Respondent further submits that the report filed by the Resolution Professional under Section 112 is significantly delayed and time-barred, thus incapable of being acted upon. As per Regulation 19 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, such a report must be filed within 120 days from the resolution commencement date, which in this case was 08.02.2023. Although proceedings were stayed by the Hon'ble NCLAT between 04.05.2023 and 06.09.2023 (126 days), even after excluding this period, the 120-day deadline expired on 01.10.2023. However, the report was filed in December 2024, over a year later, rendering it barred by limitation and legally untenable.
13. The Respondent in IA(IBC)/121/KOB/2025 has relied on decisions of the Hon'ble Apex Court in ***Ganesan v. Commissioner, Tamil Nadu Hindu Religious and Charitable Endowments Board and Others [(2019) 7 SCC 108]***, which held that Section 5 of the Limitation Act cannot be applied unless expressly permitted by statute. The Respondent stated



that Section 121 does not allow for the condonation of delay, the application is time-barred and not maintainable under Section 123 of the Insolvency and Bankruptcy Code, 2016.

14. The Applicant places reliance on the judgment of the Hon'ble Supreme Court in ***Sesh Nath Singh & Ors. v. Baidyabati Sheoraphuli Co-operative Bank Ltd. & Anr.***, [2021] **ibclaw.in 49 SC**, wherein it was held that the provisions of the Limitation Act, 1963, apply to proceedings before the NCLT and NCLAT, to the extent possible, under Section 238A of the Insolvency and Bankruptcy Code, 2016. The Hon'ble Apex Court clarified that Sections 6, 14, 18, and other relevant provisions of the Limitation Act are applicable mutatis mutandis and must be interpreted in a manner consistent with the object of the Insolvency and Bankruptcy Code, 2016.
15. The Applicant further relied on ***B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates (Civil Appeal No. 23988 of 2017)***, the Hon'ble Supreme Court held that Article 137 of the Limitation Act applies to applications under Sections 7 and 9 of the Insolvency and Bankruptcy Code, 2016, from the inception of the Code. The right to sue arises on the date of default, and if more than three years have passed, such applications would be barred unless the delay is condoned under Section 5 of the Limitation Act.
16. We have heard the learned Counsels for both parties and perused all the documents available on record.
17. The Applicant's contention that the moratorium under Section 94 of the Insolvency and Bankruptcy Code, 2016, precluded it from filing the bankruptcy application during the relevant period is untenable. It is



pertinent to clarify that the moratorium in the context of personal guarantors is governed not by Section 94, but by Sections 96 and 101 of the Code. According to the statutory framework, such a moratorium remains in effect only for a period of 180 days from the date of application admission, or until the Adjudicating Authority passes an order on the repayment plan under Section 114, whichever occurs earlier. Therefore, the reliance placed on an indefinite bar under Section 94 is misplaced and contrary to the scheme of the Code.

18. It is imperative to examine whether the requirements under Section 121 of the Insolvency and Bankruptcy Code, 2016, have been duly complied with by the Petitioner. For this purpose, it is pertinent to reproduce Section 121 of the Insolvency and Bankruptcy Code, 2016, as under:

Section 121: Application for bankruptcy.

121. (1) An application for bankruptcy of a debtor may be made, by a creditor individually or jointly with other creditors, or by a debtor, to the Adjudicating Authority in the following circumstances, namely:

(a) where an order has been passed by an Adjudicating Authority under sub-section 4 of section 100; or

(b) where an order has been passed by an Adjudicating Authority under sub-section 2 of section 115; or

(c) where an order has been passed by an Adjudicating Authority under sub-section 3 of section 118.

(2) An application for bankruptcy shall be filed within a period of three months of the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section (1).

(3) Where the debtor is a firm, the application under sub-section (1) may be filed by any of its partners.

19. The Respondents contended that the condonation of delay is untenable, as under Section 121(2) of the Insolvency and Bankruptcy Code, 2016, the bankruptcy application should have been filed within three months from the Adjudicating Authority's order dated 21.12.2023, which lapsed on 20.03.2024. The Respondents are of the view that this timeline must



be strictly construed and adhered to, and any deviation from the statutory period undermines the legislative intent of providing a time-bound insolvency process. They further argue that the Code does not expressly permit condonation of delay under Section 121, and therefore, any application filed beyond the prescribed three-month period is non-maintainable.

20. It is a settled position under the Code, as affirmed in ***B.K. Educational Services Pvt. Ltd. case (supra)***, that the provisions of the Limitation Act, 1963, apply to proceedings under the Insolvency and Bankruptcy Code, 2016; accordingly, this Adjudicating Authority is empowered to invoke Section 5 of the Limitation Act for condonation of delay.
21. We rely on the settled principle of statutory interpretation laid down by the Hon'ble Supreme Court in ***State of U.P. v. Babu Ram Upadhyya, AIR 1961 SC 751 : (1961) 1 Cri LJ 773***, wherein it was held that the use of the word "shall" in a statute does not necessarily render a provision mandatory in all cases. The mandatory or directory nature of such a provision must be determined by examining the overall scheme and purpose of the legislation, the context in which the term is used, and the consequences of strict compliance or non-compliance. If rigid adherence to the prescribed timeline frustrates the object of the statute or results in undue hardship, a more flexible interpretation may be warranted. Therefore, in appropriate cases, procedural timelines, though expressed in mandatory terms, may be construed as directory, especially where the statute does not prescribe specific penalties for non-compliance and where substantive rights would otherwise be defeated.



22. We further place reliance on the principle laid down by the Hon'ble Supreme Court of India in ***Topline Shoes Ltd. v. Corporation Bank, 2002 (3) SCR 1167***, wherein the Hon'ble Apex Court examined the nature of procedural time limits. It was held that while statutory provisions may prescribe specific timelines for procedural steps, such timelines are often intended to ensure expeditious proceedings rather than to impose a rigid limitation. The absence of penal consequences for exceeding the prescribed period, coupled with the discretionary power of the adjudicating authority to consider the surrounding circumstances, supports the view that such provisions are directory and not mandatory. The Hon'ble Court emphasized that procedural rules must serve the broader objective of justice, and any interpretation that leads to undue hardship or injustice must be avoided. The adjudicating authority must therefore balance the statutory guideline for prompt disposal with the principles of natural justice, ensuring that parties are not shut out merely due to procedural technicalities, especially where delay is neither deliberate nor mala fide.
23. It is important to note that a plain reading of sub-section (2) of Section 121 of the Insolvency and Bankruptcy Code, 2016, which states that an application for bankruptcy "shall" be filed within a period of three months from the date of the order passed by the Adjudicating Authority under the sections referred to in sub-section (1), may prima facie appear mandatory. However, the provision is conspicuously silent as to any consequence or penalty for non-compliance with this timeline. In the absence of such consequences, the use of the word "shall" in this context may be construed as directory rather than mandatory. The underlying intent behind prescribing the three months appears to be to ensure



expeditious proceedings, rather than to create a rigid limitation that would defeat substantive justice. Accordingly, compliance with Section 121(2) should be considered directory in nature, especially when delays are justified and do not prejudice the rights of the parties involved.

24. This Adjudicating Authority observes with concern that the Applicant, being a statutory financial institution, ought to have acted with greater diligence and in a time-bound manner, particularly considering that the Insolvency and Bankruptcy Code, 2016, is a special legislation enacted to ensure expeditious resolution and avoid undue delays. The excuse as propounded by the Applicant to explain the delay is not convincing. The Applicant has failed to approach this Adjudicating Authority within the time specified, and as such, its act and conduct warrant some conditions to balance the equilibrium. The timelines prescribed under the Code are paramount and are the foundation for its effective implementation. Delay defeats the very spirit and objective of the Insolvency and Bankruptcy Code, 2016.
25. In view of the above discussion and the settled legal position, the delay in filing the present bankruptcy applications under Section 123 of the Insolvency and Bankruptcy Code, 2016, is hereby condoned. Accordingly, **IA(IBC)/117/KOB/2025** and **IA(IBC)/121/KOB/2025** are **allowed and disposed of**, subject to the Applicant depositing a sum of **Rs. 25,000/-** (Rupees Twenty-Five Thousand only) **in each case** with the **National Defence Fund** within one week from the date of this order.
26. The Applicant is directed to file a compliance memo showing proof of such payment in both Section 121 applications, IA(IBC)/114/KOB/2025 and IA(IBC)/118/KOB/2025.

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH

IA(IBC)/117/KOB/2025 & IA(IBC)/121/KOB/2025

In re: M/s. Kerala Financial Corporation v Dr. Bharath Chandran & Dr. Ashalatha Nair



27. A copy of this order shall also be placed in IA(IBC)/114/KOB/2025 and IA(IBC)/118/KOB/2025 for further reference.
28. The Registry is directed to send e-mail copies of the order to the parties and their learned counsels for information and to take necessary steps.
29. A Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
30. List **IA(IBC)/114/KOB/2025** and **IA(IBC)/118/KOB/2025** on **16.09.2025** for further proceedings.

SD/-

MADHU SINHA
(MEMBER TECHNICAL)

SD/-

VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 3rd day of September 2025.

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