IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

IA(IBC)/397/KOB/2026
IN
CP (IBC)/12/KOB/2023

(Under Section 138 and 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11of NCLT Rules, 2016)

In the matter of:

M/s. Furnace Fabrica (India) Limited

MEMO OF PARTIES:

Mr. Kizhakkekara Kuriakose Jose
Bankruptcy Trustee of Abdul Rehman Basheeruddin, Personal Guarantor to Furnace Fabrica (India) Ltd**,** K K Jose & Associates, Yenvee Complex, Temple Road, Aluva, Ernakulam – 683 101.
E-mail: kkjoseca@gmail.com

... Applicant

Date of Institution:08.09.2026

Order delivered on: 20.11.2026

Coram:

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

HON'BLE MEMBER (TECHNICAL): SHRI RAVICHANDRAN RAMASAMY

Appearances:

For the Applicant/Bankruptcy Trustee : Mr. Sankar Panicker, Advocate

Mr. Ajith Kumar S, Advocate

O R D E R

1. This Application has been filed by the Bankruptcy Trustee under Section 138 and 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the NCLT Rules, 2016, with the following reliefs:

> *"I. To pass an order under Section 138(1)(a) of the Insolvency and Bankruptcy Code, 2016 discharging Abdul Rehman Basheeruddin, the Bankrupt, from the bankruptcy debts, subject to the provisions and exceptions contained in Section 139 of the IBC, 2016*
>
> *II. Any other order or orders which this Hon. Tribunal may deem fit and proper in the interest of justice in the circumstances of the case."*

2. The Application was filed on 08.09.2026 (E-filed on 01.09.2026) and during the pendency of this IA, the Bankrupt unfortunately expired on 20.09.2026. The Applicant has brought this fact on record and has filed the death certificate vide Memo dated 16.10.2026(E-filed on 13.10.2026).

3. The Applicant is the Bankruptcy Trustee appointed by this Adjudicating Authority vide order dated 03.12.2024 in I.A.(IBC)/437/KOB/2024 in CP(IBC)/12/KOB/2023, in the bankruptcy proceedings initiated against Mr. Abdul Rehman Basheeruddin, Personal Guarantor of M/s. Furnace Fabrica (India) Ltd. The present application is filed under Section 138(1)(a) of the IBC, 2016, seeking an order of discharge of the Bankrupt upon expiry of the one-year period prescribed under the IBC, 2016.

4. It is submitted that the administration and realisation of the assets forming part of the bankruptcy estate are continuing, including the valuation and proposed realisation of the estate. However, the pendency of the functions does not preclude the passing of an order of discharge, as the Bankruptcy Trustee may continue to discharge the functions and duties entrusted under the provisions of IBC 2016, notwithstanding the discharge of the Bankrupt. Accordingly, the

Applicant seeks an appropriate Order in favour of the Bankrupt under Section 138 of the IBC, 2016.

ANALYSIS & FINDINGS:

5. This Adjudicating Authority has heard the Applicant/Bankruptcy Trustee and also gone through the materials available on record.

6. After the death of the Bankrupt, under peculiar circumstances, we would have to check the effect of the death on this discharge application. We would like to refer to the relevant provisions under Sections 138, 139, 169 and 170 of the IBC, 2016.

> "***Section 138: Discharge order***.
>
> *"138. (1) The bankruptcy trustee shall apply to the Adjudicating Authority for a discharge order-*
>
> *(a) on the expiry of one year from the bankruptcy commencement date; or*
>
> *(b) within seven days of the approval of the committee of creditors of the completion of administration of the estates of the bankrupt under section 137, where such approval is obtained prior to the period mentioned in clause (a).*
>
> *(2) The Adjudicating Authority shall pass a discharge order on an application by the bankruptcy trustee under sub-section (1).*
> *(3) A copy of the discharge order shall be provided to the Board, for the purpose of recording an entry in the register referred to in section 196.*
>
> ***Section 139: Effect of discharge***.
>
> *"139. The discharge order under sub-section (2) of section 138 shall release the bankrupt from all the bankruptcy debt:*
> *Provided that discharge shall not-*
>
> *(a) affect the functions of the bankruptcy trustee; or*
>
> *(b) affect the operation of the provisions of Chapters IV and V of Part III; or*

(c) release the bankrupt from any debt incurred by means of fraud or breach of trust to which he was a party; or
(d) discharge the bankrupt from any excluded debt.

Section 169: Continuance of proceedings on death of bankrupt.

169. If a bankrupt dies, the bankruptcy proceedings shall continue as if he were alive.

Section 170: Administration of estate of deceased bankrupt.

**170. (1) All the provisions of Chapter V relating to the administration and distribution of the estate of the bankrupt shall, so far as the same are applicable, apply to the administration of the estate of a deceased bankrupt.*

(2) While administering the estate of a deceased bankrupt, the bankruptcy trustee shall have regard to the claims by the legal representatives of the deceased bankrupt to payment of the proper funeral and testamentary expenses incurred by them.

(3) The claims under sub-section (2) shall rank equally to the secured creditors in the priority provided under section 178.

(4) If, on the administration of the estate of a deceased bankrupt, any surplus remains in the hands of the bankruptcy trustee after payment in full of all the debts due from the deceased bankrupt, together with the costs of the administration and interest as provided under section 178, such surplus shall be paid to the legal representatives of the estate of the deceased bankrupt or dealt with in such manner as may be prescribed."

7. The cogent reading of all such provisions indicates that even after the death of the Bankrupt, the Bankruptcy proceedings would continue, and there is no reference to the impact of the death upon the discharge application. The discharge under Section 138 of the IBC, 2016, somehow has effects on the person of the Bankrupt, whereas Sections 169 and 170 of the IBC, 2016, deal with the continuation of the bankruptcy proceedings even after the death of the Bankrupt, in the same manner, as if the Bankrupt were alive. Therefore, upon death, the bankruptcy proceedings would not abate, and the authority of the

Bankruptcy Trustee does not come to an end merely because the Bankrupt has died. The Bankruptcy estate remains subject to administration in accordance with the provisions of IBC, 2016, and the creditors would be entitled to their rights in the Bankruptcy estate in accordance with the provisions of IBC,2016. So, the pending proceedings relating to the estate can continue even if the Bankrupt has died.

8. Now the important question before us for consideration is whether the Application under Section 138 of the IBC, 2016 has become infructuous upon the death or discharge, or whether an order is required to be passed in view of the language used in Section 138 and in terms of the provisions of Section 169 of the IBC, 2016, which specifically preserves the Bankruptcy proceedings.

9. We have given our thoughtful consideration to the circumstances of the present case. Admittedly, upon the death of the Bankrupt, the Application under Section 138 of the IBC, 2016 cannot be treated as abated. Further, this Adjudicating Authority is of the considered view that, in view of the specific provisions contained under Section 169 of the IBC, 2016, this present Application filed during the lifetime of the Bankrupt is liable to be decided in accordance with law.

10. The provisions of Section 138 of the IBC, 2016 have been invoked by the Applicant upon the expiry of one year. In discharge of his statutory duties, the proceedings may continue against the estate of the Bankrupt in accordance with law. Even the legal heirs, in their representative capacity, can be substituted for further proceedings, but with the clear rider that they cannot be made parties to the proceedings in their individual capacity, wherever their representation is required.

11. As per Section 169 of the IBC, 2016, the words used 'as if he were alive' are significantly used by the legislature to facilitate continuation of the bankruptcy process even after death. Therefore, the Order for discharge under Section 138 cannot be treated as exception to Section 169 of IBC, 2016.

13. Under normal circumstances, upon death of the Respondent, if legal heirs or the Applicant fails to implead the legal heirs of deceased to the party, the proceedings stood abated. A decree or Order passed against a person is a nullity, but IBC is a special statute, and bankruptcy deals with the bankrupt and its estate having effects *in rem.* The provision regarding the discharge of a bankrupt upon expiry of one year is a continuous wisdom of the legislature to keep the things within a time frame, and the language used in Section 169 about continuation of the bankruptcy process extends the scope and ambit of *in rem* proceedings. So, in the present case, even discharge of the deceased bankrupt would not affect the riders and limitations put in the IBC in estate, and the Bankruptcy would proceed further in the true spirit of IBC; just to oblige the mandate under Section 138 of IBC, this discharge is being given as such.

14. While analysing different views taken by coordinate Benches. This Bench has come across one judgment of the learned coordinate Bench of the ***National Company Law Tribunal, New Delhi***, in ***I.A. 1362/2024, along with I.A 2082/2022 and I.A. 2634/2023 in C.P. (I.B) NO. 514 OF 2020, order dated 03.09.2024***, where the Personal Guarantor demised during the pendency of the Personal Insolvency Resolution Process, and the case of the Creditor against the deceased guarantor was abated. But the fact remains that, in that case, till that time, no bankruptcy order was passed, and the same has been recorded in Para. 14 of the said Order, which is reproduced as under:

> ***"14. Further, Section 169 is in Chapter V which deals with administration and distribution of the estate of the bankrupt. Since no order for bankruptcy has been passed in the present case, reliance on Section 169 is also misplaced***."

The present case is on different footings; once the Bankruptcy order has been passed, the proceedings attain their scope *in rem*, and as such, if upon death we abate the proceedings, that would affect the rights and obligations of other stakeholders.

15. In view of the above discussion and the provisions of Section 169 of the Code, this Adjudicating Authority is of the view that the death of the Bankrupt after filing the present Application does not make it infructuous. Since the Bankruptcy Trustee has invoked Section 138(1)(a) of the Code, the Application can be considered on its merits despite the subsequent death of the Bankrupt. Accordingly, the Bankrupt is entitled to an order of discharge under Section 138 of the Code.

16. In view of the foregoing, the Bankrupt, **Mr. Abdul Rehman Basheeruddin**, Personal Guarantor, is hereby **discharged** in terms of Section 138 of the Insolvency and Bankruptcy Code, 2016.

17. The discharge granted under this Order shall be governed by the provisions of Section 139 of the Insolvency and Bankruptcy Code, 2016, without prejudice to the continued administration and distribution of the estate of the deceased Bankrupt in accordance with Sections 169 and 170 of the Code read with the applicable provisions of Chapter V of Part III of the Code.

18. Accordingly, **IA(IBC)/397/KOB/2026** in **CP(IBC)/12/KOB/2023** stands **allowed.**

19. The Registry is directed to communicate a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for the purpose of recording an entry in the register referred to in Section 196 of the Code.

20. The Registry is further directed to send e-mail copies of this order to the parties and their learned counsel for information and necessary compliance.

21. A certified copy of this order may be issued, if applied for, upon compliance with the requisite formalities.

Sd /-	**Sd /-**
RAVICHANDRAN RAMASAMY	**VINAY GOEL**
(MEMBER TECHNICAL)	**(MEMBER JUDICIAL)**

Signed on this the 20th day of November, 2026.

JL/Steno