

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

IBA/21/KOB/2019

(Under Section 7 (4) of IBC 2016)

Order delivered on 28.11.2019

Coram: 1. Hon'ble Shri Ashok Kumar Borah, Member (Judicial)
2. Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

In the matter of

The South Indian Bank Limited.]	
Regd Office: SIB House,]	: Financial Creditor/Applicant
TB Road, Thrissur,]	
Kerala- 680 001.]	

Vs.

Churukulam Tea Estates Private Limited]		
Vandiperiyar,]	: Corporate Debtor/Respondent
Idukki,]	
Kerala- 685 533.]	

Parties/Counsels Present:

For Operational Creditor/Applicant	: Mr. Sunil Shanker, Advocate
For Corporate Debtor/Respondent	: Mr. Akhil Suresh, Advocate

ORDER

1. The Financial Creditor/Applicant viz. *'The South Indian Bank Limited'* (hereinafter as 'Financial Creditor/ the Bank') has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial

Creditor" on 06.08.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as **Code**) against '*Churakulam Tea Estates Private Limited*' (hereinafter as '**Corporate Debtor**'). The registered office of the Corporate Debtor is stated to be at Vandiperiyar, Idukki, Kerala – 685 533.

2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt as on 31.07.2019 is stated to be ₹ 14,81,37,929.37/- (Rupees Fourteen Crores Eighty-One Lakhs Thirty Seven Thousand Nine Hundred and Twenty Nine and Thirty Seven Paisa Only). The date on which the default occurred is 28.02.2017.
3. The Corporate Debtor is a private limited company incorporated on 15.11.1946, having CIN No. U01132KL1946PTC000251. The Authorised and paid-up share capital of the company is ₹ 25,00,000/- and ₹ 22,25,,000/- respectively.

Submissions by the Financial Creditor :

4. The Ld. Counsel for the Financial Creditor/ Bank submitted the corporate debtor had approached the Bank for availing certain credit facilities. Considering the request and the documents submitted by the Corporate Debtor, the Bank had sanctioned the credit facilities vide Sanction Letters. The details of the Credit facilities, amount availed, disbursement date and sanction letter dates are mentioned below:

Sl. No.	Credit Facilities Provided	Amount Availed.	Date of Disbursement	Date of Sanction Intimation Letter
1.	Cash Credit (CCAL)	7,50,00,000	02.05.2014	02.05.2014
2.	Term Loan (FSL Agriculture Loan)	2,50,00,000	28.01.2015	28.01.2015
3.	Cash Credit (CCOL Agriculture Loan)	90,00,000	28.01.2015	28.01.2015

5. The counsel stated that the Corporate Debtor had renewed the CCAL and CCOL- Agricultural loans, vide Sanction Intimation Letter dated 28.06.2016.
6. The counsel for the Financial Creditor further submitted that the Cash Credit Facilities (CCAL) account No. 080508300000001 for the period of 02.05.2014 to 31.08.2018 (Annexure 7 to the application), the statement of account for Term Loan (FSL Agri Loan) account No. 080565200000001 for the period 28.01.2015 to 31.08.2018 (Annexure 8 to the application) and that the statement of account for Cash Credit (CCOL Agri Loan) Account No. 080508300000002 for the period 28.01.2015 to 31.08.2018 (Annexure 9 to the application) were duly certified under the Banker's Book of Evidence Act, 1891.
7. The Counsel for the Bank stated that the statement of account for Suit Filed account No. 0805658000000205 for the period 01.09.2018 to 29.07.2019 was also duly certified under the Banker's Book of Evidence Act (Annexure 10 to the application).
8. The Counsel further stated that the Corporate Debtor executed Loan cum hypothecation agreement (agricultural Advances) dated 02.05.2014 and an Agreement of Hypothecation dated 28.01.2015 by way of first charge. The

estimated value of the hypothecation is ₹ 168.50 Lakhs. The Corporate Debtor have also mortgaged the immovable property to the estimated value of ₹ 53.88 Crores.

9. Corporate Debtor had executed a Demand Promissory Note dated 02.05.2014 for a sum of ₹ 7.50 Crores, promising to repay a sum of Rupees Seven Crore Fifty Lakhs on demand by the Bank together with agreed rate of interest (annexure 14 of the application). The Corporate Debtor further executed a Demand Promissory Note on 28.01.2015 for a sum of ₹ 90,00,000/-, promising to repay a sum of Rupees Ninety Lakhs on demand by the Bank together with agreed rate of interest (annexure 20 of the application).
10. The Financial Creditor submitted that the Corporate Debtor after availing the credit facilities had failed and neglected to make payment of principal and/or interest, as the case may be, when they felt due for payment, resulting in accumulation of huge outstanding and slipping account into overdues status. The account of the Corporate Debtor has also been classified as non-performing asset (NPA) on 28.02.2017 .
11. Thereafter, the Bank has instituted OA. No. 475 of 2018 before the Debt Recovery Tribunal -II (DRT in short), Ernakulam under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 against the Corporate Debtor and the guarantors for issuance of recovery certificate for realisation of ₹ 13,32,02,719.10/- with interest thereon from 31.08.2018.

12. It was mentioned that out of the total extent of 413.33 Acres of tea plantation, Securitisation and Reconstruction of Financial Assets and Enforcement of security Interest Act, 2002 (SARFAESI in short) proceedings were initiated against an extent of 118.50 Cents together with factory building and machinery dated 13.11.2017. The physical possession of the said property was taken on 28.06.2018. The said Original Application is pending before DRT.

13. Hence the Financial Creditor filed this petition and prayed for admission and initiating Corporate Insolvency Resolution Process under section 7 of IBC.

Submissions by the Corporate Debtor:

14. The Ld. Counsel for the Corporate Debtor prayed time for settling their dues on each hearing dates, i.e., 30.09.2019, 09.10.2019, 24.10.2019 and 14.11.2019. The Corporate Debtor filed an affidavit on 24.10.2019 and stated that as part of genuine efforts to settle all outstanding dues, the first tranche to the tune of ₹ 10 Crores will be advanced to the Financial Creditor by 10.11.2019. Further, the entire process of transaction is agreed to be completed by the Corporate Debtor within a period of three months upon the execution of necessary agreement.

15. On 28.11.2019, the counsel for the Corporate Creditor has appeared before this Bench and submitted that expected amount has not been received and requested the Bench to take a decision as deemed fit.

Findings:

16. We have heard both the parties and perused the whole case records including documents and photocopies appended with the case records. It appeared from the records that the Corporate Debtor had sought several adjournments for settlement from 30.09.2019 to 28.11.2019.
17. The Financial Creditors wanted CIRP to be initiated against the corporate debtor without further delay. As there is a default in the payment of the financial debt, which has been agreed by the Corporate Debtor before this Bench, we are of the view that, the present application filed by the financial Creditor is satisfying all the definitions of "Financial Creditor", "Default" and "Financial Debt" and qualifies for filing an application under Insolvency and Bankruptcy Code.
18. The Financial Creditor has recommended the name of **Jasin Jose, 5D Skyline Riverscape, Thottumugham, Aluva, Kerala- 683 101**, a registered Insolvency Professional having registration No. IBBI/IPA- 001/IP-P00695/2017-2018/11225 (Email id- cajasinjose@gmail.com), for appointment as Interim Resolution Professional(IRP). The IRP proposed also has filed a declaration in Form 2 affirming that he is a registered insolvency professional and no disciplinary proceedings are pending against him. Therefore, the application on behalf of Financial Creditor is complete.

ORDER

19. In the aforesaid background, and after thoroughly perusing the records, we are of the view that, the application filed on behalf of Financial Creditor is complete. Therefore, this application under Section 7(5)(a) of the I & B Code, 2016 deserves to be **Admitted**.

20. Accordingly, the IRP proposed by the Financial Creditor, **Jasin Jose, 5D Skyline Riverscape, hottumugham, Aluva, Kerala- 683 101**, a registered Insolvency Professional having registration No. IBBI/IPA- 001/IP-P00695/2017-2018/11225 (Email id- cajasinjose@gmail.com), is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

21. Having admitted the Petition/Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc.

22. However, the supply of essential services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

23. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

24. That the Interim Resolution Professional shall perform the duties as assigned under **Section 15** and **Section 18** of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

25. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order of admission.

26. Communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.

Dated this the 28th day of November, 2019

Sd/-

(Veera Brahma Rao Arekapudi)
Member (Technical)

Sd/-

(Ashok Kumar Borah)
Member (Judicial)