

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

IBA/39/KOB/2020

(Under Section 10 of Insolvency and Bankruptcy Code 2016 read with
Rule 7 of the Insolvency and Bankruptcy (Application to adjudicating
authority) Rules, 2016.

Order delivered on 3rd February, 2021

Coram:

Hon'ble Shri Ashok Kumar Borah, Member (Judicial)

In the matter of

Alex Thomas, Managing Director,
M/s Tierra Food India Private Limited
7/491, Kinfra Food Processing Park,
26, Elamanoor Pathanamthitta,
Kerala-691524.

..... **Applicant/Corporate Applicant**

Vs.

M/s Kerala State Industrial Development Corporation
Limited (KSIDC), Keston Road, Kowdiar,
Thiruvananthapuram-695003, Kerala

.....**Respondent/Financial Creditor**

Parties/Counsel present (through video conferencing)

For the Corporate Applicant : Shri N.R.Krishnan Unni, PCS

For the Financial Creditor : Mrs. Midhuna KC, PCS

ORDER

This Application has been filed by one **Mr. ALEX THOMAS** (Corporate Applicant) in Form No.6 as prescribed under Sub Rule (1) of Rule 7 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 ('Rules') for initiating Corporate Insolvency Resolution Process against **M/s. TIERRA FOOD INDIA PRIVATE LIMITED** i.e., Corporate Debtor under Section 10 of Insolvency &

Bankruptcy Code 2016 (for short to be referred hereinafter as the 'Code'). The Application has been filed by **Mr. ALEX THOMAS**, Managing Director of Corporate Debtor who has been authorised to file an Application under the Code vide Special Resolution dated 05.11.2020. The Corporate Debtor falls within the definition of the term 'Corporate Applicant' as defined in Sub-Section (5) of Section 5 of the Code.

2. The Corporate Debtor was incorporated on 06.11.2009 having its Registered Office at 7/491, Kinfra Food Processing Park, 26 Elamanoor, Pathanamthitta-691524.

3. The authorised share capital of the Company is 5,00,000/- (Rupees Five Lakhs Only) divided into 50,000 (Fifty Thousand) equity shares of ₹10 Rupees Ten each.

4. As per Memorandum of Association of the Corporate Debtor (Annexure A8) the main objects of the Corporate Debtor are '*to carry on the business of purchase, sale, import, export, process and manufacture of food products in the form of packaged foods and beverages, ready to cook and ready to eat foods and snacks and other consumer food products.*'

5. The Corporate Applicant submitted that the total term loan sanctioned was Rupees 64,850 lakhs from KSIDC. The Corporate Debtor made defaults in repayment of Rupees 27.02 Lakhs due from 05.05.2014 to 05.02.2019 of ₹540.40 lakhs. The Corporate Debtor also defaulted in payment of interest of ₹457.37 lakhs due from 30.09.2014 to 31.03.2019 on account of cash loss incurred during the period.

6. The Corporate Debtor also furnished Sanction Letter and Default Letter issued by the KSIDC (Annexure A-2) and the unaudited financial Statements for 2019-2020 along with audited financial statements for 2017-2018 and 2018-2019 as a proof of existence of Operational Creditors and to establish the Financial Condition of the Corporate Debtor.

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7. When the matter came up for admission, this Bench issued notice to the Financial Creditor, who appeared and submitted that they have no objection in admitting this Application.

8. The learned Counsel for the Corporate Applicant is ready to bear the CIRP Cost.

9. I have heard the learned counsel for the Corporate Debtor, learned counsel for Financial Creditor and perused the records. In view of the fact that the Financial Creditor has no objection in admitting this Application, **IBA/39/KOB/2019 is Admitted**. While admitting the application the moratorium is declared for prohibiting all the following as provided in Section 14(1) of the code:

“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.”

10. It is further directed that the supply of essential goods or services to the Corporate Debtor, if continuing shall not be terminated or suspended or interrupted

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during moratorium period. The provisions of Sub Section (1) of Section 14 of the code shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to the sureties of the Corporate Debtor.

11. The moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, as the case may be.

12. The Applicant has stated in the IBA that **Mr. DILEEP K. P.** PCS may be appointed as the IRP in this matter, while admitting the matter.

13. Hence, this Tribunal appoints **Mr. DILEEP K. P.**, having Registration No. **IBBI/IPA-001/IP-P-01310/2018-2019/12220**, residing at **VELUTHEDATH House, Ponnurunni, Vytilla P.O, Cochin- 682019** and (E-Mail **kpdileep57@gmail.com**), as an **Interim Resolution Professional**, with the following directions:

(i) The term of appointment of **Mr. DILEEP K. P** shall be in accordance with the provisions of Section 16(5) of the Code.

(ii) In terms of Section 17 of 'the Code', from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the 'Corporate Debtor' shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the 'Code', including taking

control and custody of the assets over which the 'Corporate Debtor' has ownership rights recorded in the balance sheet of 'Corporate Debtor' etc. as provided in Section 18 (1) (f) of the 'Code'. The Interim Resolution Professional is directed to prepare a complete list of inventories of assets of the 'Corporate Debtor';

(iii) The Interim Resolution Professional shall strictly act in accordance with the 'Code', all the rules framed thereunder by the Board or the Central Government and in accordance with the 'Code of Conduct' governing his profession and as an Insolvency Professional with high standards of ethics and moral;

(iv) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the 'Code' read with Section 15 calling for the submission of claims against 'Corporate Debtor'; and

(v) It is also directed that the 'Corporate Debtor', its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the 'Corporate Debtor' as a going concern and extend all cooperation in accessing books and records as well as assets of the 'Corporate Debtor';

(vi) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor, constitute a committee of creditors and shall file a report, certifying constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment , and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee.

(vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

14. The learned counsel for the Applicant shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

Dated the 3rd day of February, 2021

Sd/-

(Ashok Kumar Borah)
Member (Judicial)