

IBA/44/KOB/2019

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

IBA/44/KOB/2019

*(Under Section 10 of Insolvency and Bankruptcy Code,
2016)*

Order delivered on: 03.12.2019.

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Veera Brahma Rao Arekapudi, Member (Technical)

In the matter of:

Kaula Agro Foods Pvt.Ltd.
VIII/141a, Edavanakkavu Temple Road,
Kurichilakode, Kodanadu PO,
Perumbavoor, Kerala-683544.

..... Applicant/Corporate Debtor

Counsel for the applicant

: Mr.Rajasekharan Krishnanunni, PCS

ORDER

This Application was filed by **MUHAMED SAMEER** i.e. the 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. KAULA AGRO FOODS PRIVATE LIMITED** i.e., Corporate Debtor under Section 10 of Insolvency & Bankruptcy Code 2016 (for short to be referred hereinafter as the 'Code'). The Corporate Debtor falls within the definition of the



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term 'Corporate Applicant' as defined in Sub-Section (5) of Section 5 of the Code.

2. The Corporate Debtor was incorporated on 18.02.2008 having its Registered Office at VIII/141a, Edavanakvu Temple Road, Kurichilkode, Kodanadu P.O Perumbavoor, Kerala -683544, therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The Application has been filed by Mr. **MUHAMED SAMEER**, Managing Director of Corporate Debtor who has been authorised to file a petition under the Code vide Special Resolution dated 09.10.2019.

4. The authorised share capital of the Company is ₹ 5,00,00,000/- (Rupees Crores Only) divided into 50,00,000 equity shares of ₹10 (Rupees Ten Only) each, and the paid up capital of the Company is ₹4,50,00,000/- (Rupees Four Crores Fifty Lakhs Only)

5. As per Memorandum of Association of the Corporate Debtor (Annexure G/2) the main objects of the Corporate Debtor are '*to prepare, manufacture, market, trade, import, Export, process, sell and carry on the business of pickles, spices, chillies, pepper, cloves and other food items derived from agriculture and farming activities, and carry out all kind of agriculture, horticulture and other allied activities, and also establish develop promote and aid in India or outside India any agriculture or horticulture business or industry.*'

6. The Corporate applicant submitted that against the Corporate Debtor a Financial Debt of INR ₹4,71,79,934.44 (Rupees Four Crore Seventy-One Lakhs Seventy-Nine Thousand Nine Hundred Thirty-Four Paise Forty-Four Only) and



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an Operational Debt amounting to INR 7,08,97,354 (Rupees Seven Crore Eight Lakhs Ninety-Seven Thousand Three Hundred and Fifty-Four Only) are due.

7. The Corporate Debtor also furnished Letter of Arrangement issued by the State Bank of India (Annexure A-2) and the list of Operational Debt (Annexure 3) and the unaudited financial Statements for 2018-2019 along with audited financial statements for 2017-2018 and 2016-2017 to establish the Financial Condition of the Corporate Debtor, following is the status of the Corporate debtor under different heads:-

TOTAL REVENUE INCLUDING REVENUE FROM OPERATIONS

Period	Revenue from Operations
2016	54,37,61,374.00
2017	5,59,67,235.00
2018	35,62,388.00
2019 (provisional)	5,50,000.00

ACCUMULATED PROFIT/LOSS (REVENUE AND SURPLUS) OF THE CORPORATE DEBTOR

Period	Accumulated profit/loss of the Corporate debtor
2016	(25,19,46,954.00)
2017	(31,15,08,915.00)
2018	(32,40,89,683.00)
2019 (provisional)	(33,80,61,215.00)

LONG TERM BORROWINGS AND OTHER LIABILITIES



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Period	Long Term Borrowings and other Liabilities
2016	26,18,83,025.00
2017	24,63,68,014.00
2018	24,52,56,838.00
2019 (provisional)	29,32,25,195.00

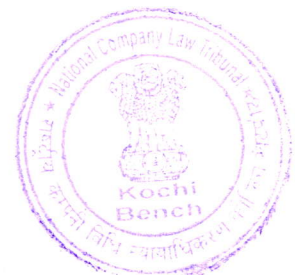
CURRENT LIABILITIES

Period	Current Liabilities
2016	14,78,81,035.00
2017	5,58,56,116.00
2018	8,92,29,664.00
2019 (provisional)	7,13,23,949.50

It is clear from above that the entire net worth of the company has been eroded, therefore the Company is unable to meet its financial obligation. Thus, Corporate Debtor has fallen into debt trap and competent to set in motion the Insolvency Resolution Process under the code to ensure maximum value of assets which is in the interest of all the stakeholders.

8. Meanwhile the Bench issued notice to the Financial Creditor and has appeared before this bench and submitted the following: -

- a. He claimed that the outstanding debt amount was much higher than shown in the instant application by the Corporate Applicant.
- b. He also stated that the entire CIRP cost must be borne by the Corporate Debtor only.



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9. The learned Counsel for the Corporate Applicant has conveyed their agreement for bearing CIRP cost. Thereafter the Counsel for Financial Creditor has not raised any objection for the application and agreed for the admission.

10. We have heard the learned counsel for the Corporate Debtor, learned counsel for Financial Creditor and perused the records. In view of the above facts the Application **IBA/44/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.”*

11. 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 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.

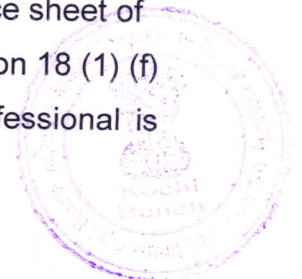


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12. The moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the resolution plan under Sub Section (1) of Section 31 or passes an order for liquidation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

13. We also appoint Mr. **K. P. DILEEP**, having Registration No. **IBBI/IPA-001/IP-P-01310/2018-2019/12220**, address **VELUTHEDATH House, Ponnurunni, Vytilla P.O, Cochin, Ernakulam Kerala- 682019** and (E-Mail kpdileep57@gmail.com), as an **Interim Resolution Professional**, as recommended in the application, with the following directions:

- (i) The term of appointment of **Mr. K P DILEEP** 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 hereby 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



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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 petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Dated the 3rd day of December, 2019

Sd/-
(Veera Brahma Rao Arekapudi)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

Certified to be True Copy

[Handwritten Signature]
4/12/19

Deputy Registrar
National Company Law Tribunal
Kochi Bench

Memo No. IBA/44/KOB/2019/10.40.1041

Date: 4.12.2019

To

1. Mr. Nattakathu Rajasekharan Krishnan Unni, Near SNDP Temple, Irumpanam, Eloor Road, Irumpanam, Kochi-682309. (PCS for applicant) - *Hand by hand through courier*

2. Shri K.P. Dileep, Veluthedath House, Ponnuruni, Vytilla PO, Cochin, Ernakulam, Kerala-682019. (Interim Resolution Professional) - *Hand by post*



Received
Sandeep Sadanand
[Handwritten Signature]
04/12/2019