

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

**CP(IBC)/52/KOB/2023**

*(Under Section 7 of the IBC, 2016)*

***In the matter of* Koravampady Estates and  
Enterprises Private Limited**

**MEMO OF PARTIES:**

**THE SOUTH INDIAN BANK LIMITED**

SIB House, Mission Quarters, T B Road,  
Thrissur- 680001

**... Petitioner/ Financial Creditor**

**-Vs-**

**KORAVAMPADY ESTATES AND ENTERPRISES  
PRIVATE LIMITED**

Post Bag No. 3, Agali P O Mannarkad Taluk  
Palakkad 678 581

**... Respondent/Corporate Debtor**

**Order delivered on: 30.5.2024**

***Coram:***

**Hon'ble Member (Technical)**

**Shri. Shyam Babu Gautam**

**Hon'ble Member (Judicial)**

**TMT. (Retd.) Justice T Krishna Valli**

***Appearances:***

For the Applicant : Mr. Josey Steephen Kattur, Advocate

For the Respondent : Ms. Sneha Nagaraj, Advocate

**ORDER**

**Per Coram**

1. The petitioner has filed this application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as IB Code) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against the Corporate Debtor, **KORAVAMPADY ESTATES AND ENTERPRISES PRIVATE LIMITED**. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).
2. Part I of the application sets out the details of the Financial Creditor from which it is evident that the Financial Creditor is registered under Companies Act, 1956 as a banking company and regulated by the RBI. As per Part II of the application, the Corporate Debtor is a Private Limited Company with Corporate Identification Number: U01119KL1998PTC012505 and having its registered office at Post Bag No. 3, Agali P O, Mannarkad Taluk, Palakkad, 678 581. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Jasin Jose, IBBI Registration Number: IBBI/IPA-001/IP-P00695/2017-2018/11225 as the Interim Resolution Professional.
3. Part IV of the application signifies the amount of debt to the tune of Rs. 3,64,09,280.46/- as on 07.11.2023. Part V of the application

describes the particulars of Financial Debt; documents, records and evidence of default as described below:

- 1) Sanction Letter dated 5/10/2015
- 2) Agreement of Hypothecation (Agricultural Advances) dated 8/10/2015;
- 3) Demand Promissory Note dated 8/10/2015;
- 4) Earmarking Agreement dated 9/10/2015;
- 5) Memorandum of Deposit of Title Deeds dated 13/10/2015:
- 6) Letter of Confirming Deposit of Title Deeds dated 13/10/2015
- 7) Sanction Letter dated 24/9/2018
- 8) Agreement on Hypothecation (Agricultural Advances) dated 24/9/2018;
- 9) Demand Promissory Note dated 24/9/2018;
- 10) Earmarking Agreement dated 24/9/2018
- 11) Sanction Letter dated 14/12/2020;
- 12) Letter of Renewal for Continuance of CCAL facilities dated 14/12/2020
- 13) Demand Promissory Note dated 14/12/2020
- 14) Acknowledgement of Debt and Security dated 14/12/2020
- 15) Recall Notice dated 03/07/2021
- 16) SARFAESI Demand Notice dated 22/07/2021
- 17) Statement of Accounts as on 07/11/2023 along with Certificate under the Bankers Book of Evidence Act, 1981
- 18) Balance Sheet of the Corporate Debtor for FY 2020-21
- 19) Record from NESL

4. Brief fact of the case is:

- i. The present application is filed by The South Indian Bank Limited, under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against the Corporate Debtor, Koravampady Estates and Enterprises Private Limited which is into business of running agricultural estates.
- ii. The CD approached FC for Cash credit agricultural loan facility(CCAL) and vide board resolution dated 08.10.2015 availed Rs. 312.99 Lakhs vide sanction letter dated 05.10.2015 by duly executing aforesaid documents. The facility was renewed on 24.09.2018 and 14.12.2020. As CD failed to honour the terms of agreement, FC classified the account of CD as NPA on 31.05.2021 and issued demand notice under SARFAESI on 22.07.2021 and called upon debt due of Rs.4,22,44,638.75 as on 21.07.2021. Despite various opportunities CD has failed to repay the amount due to FC.
- iii. It is stated that as on 07.11.2023, CD is in default of Rs. 3,64,09,280.26/- under the loan account and the date of default is on 31.05.2021. The applicant has submitted the default with NESL, information utility on 31.05.2021 and updated on 14.09.2023. The debt is above the threshold limit of 1 crore under IBC and jurisdiction falls within this Tribunal.

- iv. Since no action to settle the debt has been made by the CD, the FC proceeds under IBC to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
  - v. The application was filed by the FC on 23.11.2023 and states that the petition is filed within the period of limitation under the IBC.
5. On the respondent side, it is stated that the petitioner has arbitrarily picked date of default as 31.05.2021 to circumvent the provisions of section 10A IBC which prohibits initiation of CIRP if date of default falls between 25.03.2020 to 25.03.2021 on account of covid pandemic. Infact 31.05.2021 is date of NPA which is a classification date consequent to default which should occur ordinarily 90 days prior to such date. Hence here the default squarely falls in the suspension/exemption period envisaged in IBC. It is stated that petitioner has also initiated SARFAESI process and this dual approach undermines object of IBC. Further stated that the petitioner has neglected the RBI guidelines on account of covid economic crisis to extend relief packages to CD and relax payment pressures. Petitioner relies on its financial statement to show default prior to March 31<sup>st</sup> 2021 and the definition of 'default' under IBC as well as 'default' and 'NPA' under SARFAESI act. It is stated that date of default is not subject to strict interpretation as date of NPA, relies on Hon'ble apex court in **Lasmi Pat Surana Vs UOI & Ors., Edelweiss Asset Reconstruction Company Limited V Perfect Engine Components Pvt Ltd, and Ramesh Kymal V S**

**Siemens Gamesa Renewable Power Pvt Ltd., and NCLT Cuttack  
in Small Industries Development Bank of India Vs Sambandh  
Finserve Pvt Ltd & Ors.**

6. Heard the submissions, and perused the documents placed on record. The debt amounting to 3,64,09,280.26/- as on 07.11.2023 is beyond the threshold limit stipulated under the IBC, 2016. The date of default of debt by the CD is stated as 31.05.2021 which is from date of classification of NPA. This petition filed on 23.11.2023 comes well within the period of limitation under the law.
7. The only issue which needs answer is whether the 'date of default of debt' here is the date of NPA which is the date of default stated by FC in Form 1, or the actual date of default which in this case possibly falls between 25.03.2020 to 25.03.2021 in which case the petition will be hit by section 10A exemption under IBC. Now it is settled by Hon'ble Supreme Court in **Laxmi Pat Surana v. Union Bank of India, (2021) 8 SCC 481**, "*that the 'date of default' does not mean a strict interpretation that it has to be the 'date of NPA' in fact, the 'date of default' defined under Section 3(12) of the Code is to mean 'non-payment of a debt which has become 'due and payable' whether in whole or any part and is not paid by the Corporate Debtor'*," In the matter of **Ramesh Kymal V S Siemens Gamesa Renewable Power Pvt Ltd.**, it was held by Hon'ble Supreme Court that the date of default cannot be changed by the Bank. It has also been held by Hon'ble Supreme Court that the period of limitation would be attracted from the date when the default occurs and not

from the date of declaration of NPA. But to draw a parallel between date of default for limitation and date of default of debt is not correct as the criteria for determination of limitation period additionally depends on events of acknowledgement of debt whereas date of default of debt is directly dependent on non-payment of debt which becomes due. The SARFAESI Act defines 'default' as well as 'NPA' but IBC only defines 'default' which is when debt becomes due and payable and is not paid by debtor, and as per the definition of 'default' in IBC, the interpretation that date of default is the date of NPA cannot be correct as the Banks follow RBI norms before classifying an account on which default persists as NPA. However, in going through the judgements placed before us read with provisions of IBC, we feel that the determination of date of default could be contingent upon the underlying agreement creating the obligation of payment of debt as well as the consequent actions. In any case, a subsequent understanding between parties, for e.g., an OTS proposal, can give rise to a new date of default. Though there is no strict rule that date of NPA should be the date of default, there is also no strict rule that date of default should be the 'first date of default'. The respondent has made a default which is admitted, and no action has been taken to settle the debt till date. It is after due compliance process that FC has classified the account as NPA. Now what needs to be considered here is that if the FC is to take date of default on a certain date, what it intends to do should also be that such date should be the date from which any claim of 'further interests' or

'penal interest' should lie to the claim of the FC. Here though in Annexure A/16 recall notice, the further interest is stated to be chargeable from 14.10.2020, no such amount is seen to have been claimed by the FC in the petition. Hence, considering the circumstances in the present case, there is no arbitrary process adopted by FC and also no bar prevails for the date of NPA to not be considered as the date of default in this petition. Accepting the defence made by respondents which is purely based on literal interpretation of 'default date' may render a 'narrow view' in this matter. Even to give recess to CD in this matter for sake of equity will only delay any possibility of a resolution.

8. Now, as per the Insolvency and Bankruptcy Code, 2016 the definition of Financial Creditor under Section 5 (7) means any person to whom a Financial Debt is owed and includes a person to whom such debt has been legally assigned or transferred to; thereby, the applicant herein, is a Financial Creditor. From records produced before us it is evident that there exists a 'Debt' between the parties and the said debt qualifies to be a 'Financial Debt' as defined under 5(8) of IBC, 2016. Also, the Corporate Debtor has defaulted in repayment of the said 'Financial Debt' which is due and payable to the Financial Creditor. Under the aforementioned conditions, this Tribunal has no choice but to move forward with the current case and start the Corporate Insolvency Resolution Process with regards to the Corporate Debtor in light of any objections raised by the Corporate Debtor. So, in light of the case's facts, circumstances narrated in the preceding paras, and legal

provisions envisaged under the code, we believe that this application, as submitted by the Applicant-Financial Creditor, deserves be admitted under Section 7(5) of the IBC, 2016.

9. In view of the aforesaid observations, we hereby admit the petition and pass the following Orders.
  - A. The petition bearing CP (IBC)/52/ KOB /2023, by South Indian Bank Limited, the Financial Creditor, under section 7 of Insolvency and Bankruptcy Code 2016 read with rule 4 (1) of Insolvency and Bankruptcy (Petition to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Koravampady Estates and Enterprises Private Limited**, (CIN: U01119KL1998PTC012505), the corporate debtor is **ADMITTED**.
  - B. There will be a moratorium under section 14 of the Code.
  - C. The moratorium shall have effect from the date of this order till the completion of the CIRP or until the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of Corporate Debtor under section 33 of the Code, as the case may be.
  - D. Public announcement of the CIRP shall be made immediately as specified under section 13 of the code read with regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations 2016.

- E. The Financial Creditor has proposed the name of one Mr. Jasin Jose, IBBI Registration Number: IBBI/IPA-001/IP-P00695/2017-2018/11225, email: **jasin jose ponmattam@gmail.com**, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The designated IRP must take any additional actions in this regard that are mandated by the law, more specifically Sections 15, 17, and 18 of the Code. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016. The fee payable to IRP or as the case may be, the RP shall comply with such Regulation, Circulars and Directions as may be issued by the Insolvency and Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by section 15, and to 21 of the Code.
- F. During the CIRP period the management of the Corporate Debtor shall vest with the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to

the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow.

- G. The IRP/RP shall submit to this Adjudicating Authority periodical reports concerning the progress of the CIRP in respect of the Corporate Debtor.
- H. The financial creditor shall deposit a sum of Rs.3,00,000/- (Three Lakhs Only) with the IRP to meet the expenses arising out of issuing publication and inviting claims. These expenses are subject to approval by the Committee of Creditor (COC).
- I. In terms of section 7 (5)(a) of the Code, the Registry is hereby directed to communicate a copy of this Order to the Financial Creditor, the corporate debtor and IRP by Speed Post & e-mail immediately, and in any case, not later than two days from the date of this order.
- J. Additionally, the Financial Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, Kerala, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt a copy of this order.
10. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

11. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

SHYAM BABU  
GAUTAM

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**SHYAM BABU GAUTAM**  
**(MEMBER TECHNICAL)**

T.KRISHNAVALLI

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**T KRISHNA VALLI**  
**(MEMBER JUDICIAL)**

Signed on this, the 30<sup>th</sup> day of May, 2024.

Rohit/LRA