

THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KOCHI

TIBA/31/KOB/2019
(IBA/205 of 2019 – NCLT Chennai Bench)

Connected with

TIBA/10/KOB/2019
(IBA No. 439 of 2019 – NCLT Chennai Bench)

Under Section 7 of IBC 2016 r/w rule 4 of IB(A&AA) RULES, 2016

Order delivered on 18.09.2019

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

In the matter of

TIBA/31/KOB/2019
(IBA/205 of 2019 – NCLT Chennai Bench)

1. Shri Vijayakumar J, 3, Marappan Street-1, Surampatti, Erode-638 009, Tamilnadu]	:	Operational Creditor/Applicant
2. Mrs. Ajitha Kumar, No.3/11, Marappan, ST-1, Surampatti, Erode, Tamilndau.]		
3. Mrs. Rajamma Mani, Thondapurathu Anil Villa, Valanjavattom PO, Thiruvalla – 689 104]		
Mr.Nisha Anil, Thondapurathu Thekkethil, Valanjavattom PO, Thiruvalla.]		

5. Mr. Anil T.P.
Thondapurathu Thekkethil,
Valanjavattom PO, Thiruvalla/
6. Miss Silla Anil,
Chembankuzhy, Nerimangalam
P.O. Kothamangalam.
7. Miss Naveen Chellam M,
145, Sakthi Nagar, 5th Street,
Thindal, Erode, Tamilnadu.
8. Minor Aruroop Kumar V.
MoG Ajitjha kumari,
3/11 Marappan Street-1,
Hindhu Kalvi Nilayam,
Near Surampatti, Erode,
Tamilnadu.
9. Minor Sruthi Viji,
D/o Vijayakumar,
No.3/11, Marappan, Street-1,
Hindhu Kalvi Nilayam,
Near Surampatti, Erode, Tamilndau
10. Mr. Jayachandran,
14/56, Narasimmapuram Nadu Street,
Karur, Tamil Nadu.

Vs.

Kerala Housing Finance Limited,
II Floor, African Plaza,
Pulimoodu Junction,
Trivandrum, Kerala – 695001

: Corporate Debtor/ Respondent

Parties/Counsels Present:

For Operational Creditor/Applicant

: R. Ramasubramaniam Raja,
Denu Joseph, Advocates

For Corporate Debtor/Respondent

: Harikumar G. Nair, Akhil Suresh, Jerin
Asher Sojan, Advocates



Connected with

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(IBA No. 439 of 2019 – NCLT Chennai Bench)

TIBA/10/KOB/2019
(IBA No. 439 of 2019 – NCLT Chennai Bench)

1. Shri Jacob Cherian]
3, Marappan Street-1,]
Surampatti, Erode-638 009, Tamilnadu]
2. Mrs. Ajitha Kumar,]
No.3/11, Marappan, ST-1,]
Surampatti, Erode, Tamilndau.]
3. Mrs. Rajamma Mani,]
Thondapurathu Anil Villa,]
Valanjavattom PO, Thiruvalla – 689 104]
4. Mr.Nisha Anil,]
Thondapurathu Thekkethil,]
Valanjavattom PO, Thiruvalla.]
5. Mr.Anil T.P.]
Thondapurathu Thekkethil,]
Valanjavattom PO, Thiruvalla/]
6. Miss Silla Anil,]
Chembankuzhy, Nerimangalam]
P.O. Kothamangalam.]
7. Miss Naveen Chellam M,]
145, Sakthi Nagar, 5th Street,]
Thindal, Erode, Tamilnadu.]
8. Minor Aruroop Kumar V.]
MoG Ajitjha kumari,]
3/11 Marappan Street-1,]
Hindhu Kalvi Nilayam,]
Near Surampatti, Erode,]
Tamilnadu.]
9. Minor Sruthi Viji,]
D/o Vijayakumar,]
No.3/11, Marappan, Street-1,]
Hindhu Kalvi Nilayam,]
Near Surampatti, Erode, Tamilndau]

: Operational
Creditor/Applicant



10. Mr. Jayachandran,
14/56, Narasimmapuram Nadu Street,
Karur, Tamil Nadu.

Vs.

Kerala Housing Finance Limited,
II Floor, African Plaza,
Pulimoodu Junction,
Trivandrum, Kerala – 695001

] : Corporate Debtor/ Respondent

Parties/Counsels Present:

For Operational Creditor/Applicant : John Zacharia, Advocate

For Corporate Debtor/Respondent : Harikumar G. Nair, Akhil Suresh, Jerin Asher Sojan, Advocates

ORDER

TIBA 10/KOB/2019 (IBA No; 439/2016 of NCLT Chennai - Jacob Cherian & Ors Versus KHFL) and TIBA/31/KOB/2019 (IBA/205 of 2019 – NCLT Chennai Bench – Vijayakumar J. & 9 Others Vs. KHFL), which has similar contention and claims by the financial creditors against the same corporate debtor, as such both the cases are clubbed and heard together and passed the following common order.

TIBA 10/KOB/2019

1. The present application has been filed by the Financial Creditor/Applicant, i.e. Jacob Cherian and Kunjamma Cherian U/s 7 of the Insolvency & Bankruptcy Code,



TIBA/10/KOB/2019
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2016 read with Rule 4 of the Insolvency & Bankruptcy Rules, 2016, seeking for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor Company i.e. Kerala Housing Finance Limited. The total amount of default is INR 11,85,800/- and the date of default is 10.07.2018.

2. The brief facts of the case are stated as under:

That the Applicants have subscribed 770 Secured Redeemable Non-Convertible Bonds with unit value of INR 1000/- (Rupees one thousand only) each on 10.07.2015 and the same was matured on 10.07.2018 and may be redeemed on 10.07.2022. These Bonds were issued under the authority of the Resolution passed by the shareholders, at their meeting held on 05.03.2014.

3. That the Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956, in the year 1992. In the year 2006, the corporate debtor got registered under Section 29A of the National Housing Bank Act, 1987 ("NHB Act, 1987"). The registration was granted without permission to accept public deposits.

4. The corporate Debtor issued the Bond Certificates dated 10.07.2015 (Bond Nos: 6822 CGNR) and promises to pay the holder on demand, i.e., the financial creditors a sum of INR 11,85,800/- (Rupees eleven lakh eighty-five thousand eight hundred only). On 10.11.2018 and 21.11.2018 the corporate debtor issued account payee cheques (Cheque Nos : 10105952 and 10105953 respectively) toward Jacob Cherian and both were returned due to insufficient fund. The copy of the same was attached with the application.



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5. Hence the financial creditor filed this petition and prayed for admission and initiating Corporate Insolvency Resolution Process.

TIBA/31/KOB/2019

6. The present application has been filed by the Financial Creditor/Applicant, i.e. Mr. Vijayakumar. J, Mrs. Ajitha Kumari P.T, Mrs. Rajamma Mani, Mrs. Nisha Anil, Mr. Anil T.P, Miss. Silla Anil, Miss. Naveen Chellam. M, Minor. Anuroop Kumar. V, Minor. Sruthi Viji and Mr. R. Jayachandran Under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy Rules, 2016, seeking for initiation of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor Company i.e. Kerala Housing Finance Limited.
7. The total amount of default is INR 54,89,916/- (Rupees Fifty-four lakh eighty-nine thousand nine hundred and sixteen only).
8. The brief facts of the case are stated as under:

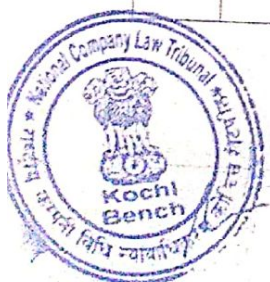
That the Financial Creditors had subscribed to Redeemable Non-Convertible Bonds issued by the corporate Debtor. The Financial Creditors subscription to the debentures and amount claimed to be in default is as follows: -



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SL NO	NAME	ALLOTMENT DATE	NO. OF BONDS	AMOUNT	MATURITY DATE	MATURITY AMOUNT	PRINCIPAL AMOUNT	INTEREST @ 12% P.A From Default Dt As On 18.01.2019
1.	Vijayakumar. J	28.09.2015	300	3,00,000	28.12.2018	4,40,700	4,40,700	2,897
2.	Ajitha Kumari P.T	28.09.2015	300	3,00,000	28.12.2018	4,40,700	4,40,700	2,897
3.	Rajamma Mani	28.09.2015	600	6,00,000	28.12.2018	9,09,600	9,09,600	5,980
4.	Nisha Anil	29.09.2015	300	3,00,000	29.12.2018	4,40,700	4,40,700	2,898
5.	Anil T.P	29.09.2015	300	3,00,000	29.12.2018	4,40,700	4,40,700	2,897
6.	Silla Anil	29.09.2015	300	3,00,000	29.12.2018	4,40,700	4,40,700	2,897
7.	Naveen Chellam. M	28.12.2015	500	5,00,000	28.03.2019	7,34,500	5,00,000	2,18,671
8.	Anuroop Kumar. V	14.04.2018	100	1,00,000	14.07.2021	1,00,000	1,00,000	9,368
9.	Ajitha Kumari P.T	14.04.2018	100	1,00,000	14.07.2021	1,00,000	1,00,000	9,368
10	Sruthi Viji	14.04.2018	100	1,00,000	14.07.2021	1,00,000	1,00,000	9,368
11	R.Jayachandran	14.04.2018	175	1,75,000	14.07.2021	1,75,000	1,75,000	16,394
12	Rajamma Mani	16.04.2018	175	1,75,000	16.07.2021	1,75,000	1,75,000	16,394
13	Jayachandran	16.04.2018	175	1,75,000	16.07.2021	1,75,000	1,75,000	16,394
14	Rajamma Mani	16.04.2018	175	1,75,000	16.07.2021	1,75,000	1,75,000	16,394
15	Silla Anil	25.04.2018	170	1,70,000	25.07.2021	2,36,300	1,70,000	14,085
16	Vijayakumar.J	25.04.2018	150	1,50,000	25.07.2021	2,08,500	1,50,000	13,052
17	Anil T.P	25.04.2018	180	1,80,000	25.07.2021	2,50,200	1,80,000	16,863
	TOTAL			41,00,000		55,42,600	51,13,100	3,76,816
Principal + Interest = 51,13,100 + 3,76,816 = Rs. 54,89,916/-								



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9. The financial creditors in their petition stated that they have been misrepresented by the Directors and promoters of the corporate debtor. The financial creditor at present only came to know about the violation and the fraudulent transactions of raising money in the form of public deposits and issuing Non-Convertible Debentures in contravention of the Companies Act, SEBI Regulations, Orders of SEBI and transacting business in the field of housing finance, despite orders against such operations.

10. The financial creditors reliably understood that the corporate debtor's directors/promoters have diverted funds raised through NCDs. The Corporate Debtor's Directors/Promoters are involved in fraudulent conduct of running the business of the company and are in serious violations of the Companies Act, SEBI Regulations and directions and orders of SEBI and NHB.

11. On enquiry made by the financial creditors, it is learnt that the corporate debtor's directors/ promoters, previous directors/promoters, and their relatives and close associates have siphoned off the funds collected by the corporate debtor from the public for their personal benefits. The funds thus collected is also understood to be diverted and utilized for the affairs and creating assets for the companies like M/s. Kerala Hospitality Limited, M/s. Mullassery Film Ventures Pvt. Ltd., M/s. Grihachand Nidhi Ltd. And such other ventures in which the directors/ promoters or their relatives, etc. are involved.



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12. In reply to present application Counsel for the Corporate Debtor stated as under:

That the Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956. It is established in the year 1992 as the first Housing Finance Company registered in the state of Kerala having its registered office in Trivandrum and 28 branches spread all over Kerala. In the year 2006, the corporate debtor got registered under Section 29A of the National Housing Bank Act, 1987 ("NHB Act, 1987").

13. The corporate debtor is engaged in lending and other allied activities. the corporate debtor has been functioning with the mission to provide timely credit to customers with best options through customer friendly and hassle-free procedures with the Moto 'one family one house'. The Corporate debtors focus has been on housing loans, mortgage loans, personal loans, home maintenance loans, extra for rural sectors against sufficient Collateral security. Funds for the lending activities has been raised from the market by way of issue of equity and preference shares and non-convertible debentures (NCD). The company's assets became stressed assets over a period of time. There are good chances of recovery of loans with rigorous approach. In view of regulatory restrictions presently there are no resource mobilization channels available for the company and this has resulted in a resource crunch. Demonetisation of notes and flood in Kerala last year further affected the repayment of loans.



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14. The Corporate debtor claims that the application filed by the financial creditors is filed with a motive of abusing the provisions of the IB Code. The counsel in his counter affidavit states that the present application filed by the financial creditors is not maintainable and the threshold for the fact that the corporate debtor is well within the ambit of the definition of 'financial service providers'.

15. The corporate debtor further stated that the certificate of registration issued to corporate debtor has been cancelled by an order of the National Housing Bank. Thereafter the company has gone into a state of dormant. Thereafter, the Hon'ble High Court was pleased to revive the certificate of registration to the extent of recovery of its arrears. Due to few procedural slips and were not deliberate, the reinstatement of registration is possible only upon compliance of the same. Currently, the corporate debtor is planning to raise funds through new investors.

16. The counsel for the corporate debtor further stated that the respondent company do not come within the definition of 'Corporate Person' as defined in sub-section (7) of Section 3 of the I&B Code in view of exception carved out therein, and thus cannot be treated to be a 'Corporate Debtor' within the meaning of sub-section (8) of Section 3 of the I&B Code.

17. The counsel for corporate Debtor during the hearing on 17.09.2019 submitted that the company has sufficient assets, which can be alienated to recover the money pay off all of the debenture holders. The counsel for Corporate debtor also informed



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this Bench that the corporate debtor however, was restrained from alienating assets as per the order of the Hon'ble NCLT, Chennai Bench.

18. The corporate debtor further submitted that two of their offices were sealed by Police authority and some of the documents were also ceased. He also admitted the amount due to the financial creditors and they have no objection to undergo the CIRP process asked by the Financial Creditors.

FINDINGS

19. After carefully examining all the facts and circumstances of this case, it was found that the SEBI had examined the matter on issuance of equity shares and NCDs by the Company and passed an Order dated 31.07.2015 that the Company, its directors and promoters were restrained from mobilizing funds through issue of equity shares or through any other form of securities, to the public and/ or invites subscription, in any manner whatsoever, either directly or indirectly till further directions. Further, vide another order dated 20.11.2015, SEBI directed the Company, inter-alia, to cease to mobilize fresh funds from investors through the Offer of NCDs or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions.



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20. While going through the Order of National Housing Bank dated 17.02.2016, we have noted that the NHB have cancelled the registration of the Corporate Debtor and passed the following order:

"..... in exercise of powers under sub-section (6) of Section 29A of the National Housing Bank Act, 1987, do hereby cancel the Certificate of Registration 02.0064.06 dated 17-04-2006, granted to Kerala Housing Finance Ltd., a company having its registered office at II Floor, Africa Plaza, Pulimood Junction, Thiruvananthapuram, Kerala- 695 001"

Even after cancellation of the registration, they continue to contravene the conditions specified in NHB Order as well as SEBI Order. Therefore, they cannot claim any protection under the name 'financial service' as defined under Section 3 (16) of the I&B Code. Their contention that of NBFC also do not hold good as Corporate Debtor's certificate of registration was cancelled by NHB on 17.02.2016.

21. We have heard both the parties and also perused the whole case records including documents and photocopies appended with the case records. It appeared from the records that the financial creditors wanted CIRP to be initiated against the corporate debtor and the corporate debtor apparently do not have any objection for the same. There is default in the payment of the financial debt, which fact has been agreed to by the Corporate Debtor before this court. Therefore, as per section 7(5)(a) of the code, the present application filed U/S 7 of the I B Code deserves to be admitted.

22. In the aforesaid background, the application on behalf of financial creditors/creditors are complete, and also no disciplinary proceeding is pending against the Corporate Debtor. In response to CIRP, Financial Creditors have suggested the name, Mr. P.D Vincent, Secretary, SVJS & Associates, 39/3525, Kausthubham, Manikkath Road,



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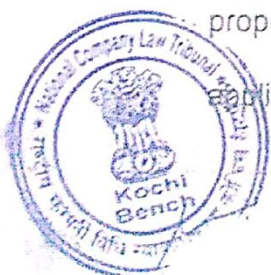
Ravipuram, Kochi- 682 016, for appointment as Interim Resolution Professional(IRP). The IRP proposed also has filed a declaration in Form 2 affirming that he is registered insolvency professional and no disciplinary proceedings are pending against him. It is also pertinent to note that applicants/financial creditors in both cases agreed for the IRP proposed in TIBA/31/KOB/2019 (IBA/205/2019 of NCLT Chennai).

ORDER

23. On going through the facts and submissions of the petitioner and upon considering the same, it is concluded that the Financial Creditors have established that the bonds were duly issued by the Corporate Debtor but there has been default in payment of the due amount on the part of the Corporate Debtor.

24. Considering the facts of both the cases, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that admittedly there is a "Default" as defined under section 3 (12) of the Code on the part of the Corporate Debtor. As a consequence, keeping the admitted facts in mind, it is found that the Financial Creditors have not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioners, we are of the conscientious view that both the Petitions deserve 'Admission'.

25. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition filed by the Financial Creditor in TIBA/31/KOB/2019 and there



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is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

26. Hence, after perusal of the provisions of the Code and facts and circumstances of both these cases along with the submissions of the Financial Creditors and Corporate Debtor, it is hereby held that these Petitions/Applications are Admitted.

27. The Financial Creditor of TIBA/31/KOB/2019 has proposed the name of Insolvency Professional, Mr. P.D Vincent, Company Secretary, SVJS & Associates, 39/3525, Kausthubham, Manikkath Road, Ravipuram, Kochi- 682 016 , having registration No. IBBI/IPA-002/IP-N00521/2017-2018/11638 (E_mail ID : vincent@svjs.in) is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process against Corporate Debtor.

28. Having admitted the Petitions/Applications, 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.

29. However, the supply of essential goods or 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.



30. 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. The order of initiation of CIRP against Corporate Debtor be intimated to the police authorities concerned by the IRP and seek their co-operation in the Resolution Process.

31. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 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.

32. We direct the Financial Creditors/applicants of the cases to deposit a total sum of **Rs. 2,00,000 (Rupees Two lakhs only)** with the Interim Resolution Professional namely Mr. P. D. Vincent, to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Financial Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted by Interim Resolution Professional and shall be paid back to the Financial Creditor.



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

34. Accordingly, the above TIBA/10/KOB/2019 and TIBA/31/KOB/2019 are 'Admitted'.

Dated this the 18th day of September, 2019

Sd/-

Veera Brahma Rao Arakapudi
Member (Technical)

Sd/-

Ashok Kumar Borah
Member (Judicial)

tej

Certified to be True Copy

[Handwritten Signature]

Deputy Registrar
National Company Law Tribunal
Kochi Bench

Memo No. TIBA 10&31/KOB/2019/500

Date: 19.09.2019

To

1. Advocate Mr. Ramasubhramaniam Raja & Adv.Denu Joseph, S.G.Chancery Chambers, Kalabhavan Road, Near Town Hall, Ernakulam-682018. (Counsel for Operational Creditor/Applicants in TIBA/31/KOB/2019)
 2. Adv. Harikumar G.Nair & Akhil Suresh, New No.115, 1st floor, Luz Church Road, Mylapore, Chennai-600004. (Counsel for Corporate Debtor/Respondent in TIBA/31/KOB/2019 & TIBA/10/KOB/2019).
 3. Adv.John Zacharia, Fox Mandal Associates, FM House, N.No.302,O.No.228, Anna Salai, Teynampet, Chennai-600 006. (Counsel for Operational Creditor/Applicant in TIBA/10/KOB/2019).
- Shri P.D.Vincent, Company Secretary, SVJS & Associates, 39/3525, Kausthubham, Manikkath Road, Ravipuram, Kochi-682016. (Resolution Professional).

