



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

CP(IBC)/56/KOB/2022

(Under Section 7 of IBC, 2016)

*In the matter of Kerala Financial Corporation V/s. Sree Sankara Community for Ayurveda Consciousness Limited.*

**MEMO OF PARTIES:**

KERALA FINANCIAL CORPORATION

Vellayambalam,

Thiruvananthapuram – 695 033

... **Petitioner/Financial Creditor**

**-Versus-**

SREE SANKARA COMMUNITY FOR AYURVEDA CONSCIOUSNESS LIMITED, 452/XIX, Sree Sankara Building Perunna East, Changanacherry, Kottayam, Kerala – 686 102.

... **Respondent/ Corporate Debtor**

***Coram:***

Shri P. Mohan Raj

: Member (Judicial)

Shri Satya Ranjan Prasad

: Member (Technical)

***Appearances (through video conferencing)***

For Petitioner

: Mr. Vinod P V  
Advocate

For Respondent

: Mr. C I Abraham  
Advocate

**Order reserved on: 15.03.2023**  
**Order pronounced on: 04.05.2023**

**ORDER**

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, **SREE SANKARA COMMUNITY FOR AYURVEDA CONSCIOUSNESS 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 a state Financial Institution established on 01.12.1953 under the State Financial Corporations Act, 1951. As per Part II of the application, the Corporate Debtor is a public Limited Company with Corporate Identification Number U85320KL1995PLC008998 and with registered office at 452/XIX, Sree Sankara Building, Perunna East Changanacherry, Kottayam, Kerala 686102. As per Part III of the application, the Financial Creditor has proposed the name of one Mr. Dileep K P, IBBI Registration Number: IBBI/IPA-001/IP-P01310/2018-2019/12220 as the Interim Resolution Professional.
3. Part IV of the application signifies the amount of debt to the tune of Rs. 25,31,99,615/- as on 04.11.2022. Part V of the application describes the particulars of Financial Debt; documents, records and evidence of default as described below:
  - a) Sanction letter for Loan of Rs.10 Crore dated 11.09.2013
  - b) Loan agreement with Corporate Debtor dated 23.09.2013.
  - c) Deed of hypothecation of goods and assets dated 24.09.2013
  - d) Deed of guarantee dated 24.09.2013
  - e) Letter of confirmation of equitable mortgage of immovable properties dated 23.09.2013 and 24.09.2013
  - f) Supplementary Loan Agreement dated 03.10.2013
  - g) Letter of confirmation of equitable mortgage dated 04.10.2013



- h) Deed of hypothecation dated 04.10.2013.
- i) Copy of Index of charges registered with Registrar of Companies, Kerala
- j) Statement of loan accounts No. 090153510 & 090153520 for the period 24.09.2013 to 01.11.2022 of the corporate debtor along with certificate under the Bankers Book evidence act, 1891
- k) Copy of financial statements of CD for year ended 31.03.2022
- l) Demand Notices issued to CD under SFC Act and the reply letter of CD.
- m) Revenue Recovery Notice issued to CD and reply letter of CD acknowledging the debt.
- n) Application of Corporate Debtor for compromise settlement dated 10.04.2018 and the Financial Creditor Letters dated 08.05.2018 agreeing to settle the dues for 10.10 Crore.
- o) Letter of the Corporate Debtor dated 22.06.2018 seeking extension for further 60 days to make the payment as per the one-time settlement and the reply letter of Financial Creditor dated 04.07.2018.
- p) Copy of section 13(2) notice issued to CD dated 16.10.2020
- q) Copy of the possession notice dated 20.02.2021 issued under Section 13(4) of the SARFAESI Act against the Corporate Debtor and Guarantor
- r) Copy of letters of CD dated 23.07.2019, 04.11.2019 and 07.11.2021 seeking OTS offer from FC

4. Brief fact of the case is:

- i. The present application is filed by Kerala Financial Corporation, the Financial Creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 to initiate Corporate Insolvency Resolution Process against



the Corporate Debtor, Sree Sankara Community for Ayurveda Consciousness Limited.

- ii. The Financial Creditor sanctioned the loan facility for Rs.10,00,00,000/- to the Corporate Debtor by way of loan agreement dated 23.09.2013 which was duly acknowledged by the Corporate Debtor, its directors. CD hypothecated the movable assets on 24.09.2013 and a total amount of Rs.9,35,00,000/- was disbursed to CD on 24.09.2013 and 04.10.2013.
- iii. As security, CD created first charge on fixed assets of CD by way of equitable mortgage on immovable properties of 50.79 are of land owned by CD in Changanassery village and Kottayam and 269.78 Ares in Anakkara village in Idukki District Kerala, along with land and building and plant and machinery thereof. Additionally, the directors and shareholders, Mr. Balachandra Das, Mr. M.C. Mohanachandra Das, Mrs. Parvathy Mohan, Mrs. Latha Mohan, Mrs. Meena Vijaychandra Das, Mr. Sankarankutty, Mrs. Bhavani T, Mr. M C Rajachandra Das and Mr. M C Vijayachandra Das have extended personal guarantees for full repayment including penalty and costs. Charge was created for Rs.10 Crore in favour of Financial Creditor with ROC on 24.09.2013.
- iv. CD defaulted in repayment of loan and the account of CD turned NPA in the books of Financial Creditor on 02.09.2015. Consequently, FC issued notice under section 29 of SFC Act on 03.02.2016 and 03.02.2017 and Revenue recovery notices were issued on 17.10.2016 and 08.03.2017. Deputy Tahsildar had initiated RRC proceedings on 29.05.2017. CD thereafter made a compromise settlement application on 10.04.2018 to settle dues in CS Adalat to be conducted by the FC. The Adalat was conducted on 08.05.2018 and time was granted till 30.06.2018 for payment. A further extension was sought by CD which was granted till 31.07.2018. The dues were not settled and further time was requested vide letters dated 23.07.2018 and 04.11.2018 on account of floods in state. CD also issued a cheque dated 30.11.2018 for 1 crore



however the payment was not made. Acknowledgement of debt was made by CD vide letter dated 07.11.2020 for settlement of 10.10 crore debt. SARFAESI demand notice was issued against the CD by the FC on 20.04.2021 for an amount outstanding Rs.18,42,49,211/-. It is stated that as on 04.11.2022 and amount of Rs.25,31,99,615/- is due towards principal, interest and penalty towards the FC.

- v. 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.
  - vi. The application was filed by the FC on 15.11.2022 and state that he has filed the petition within the period of limitation under the IBC.
5. On the respondent side, it is submitted that the CD had initiated proceedings before DRT-2, against the possession of immovable properties by the FC, Ernakulam and that the matter was stayed by the Hon'ble High Court of Kerala. Further it is submitted that the CD is in the business of running Hospitals in name 'Sree Sankara Hospital' and also has been cultivating medicinal crops in the land of CD provided as security to the FC. It is further stated that 5 doctors and 44 employees on roll of the CD.
6. Heard the Counsel for petitioner, and perused the documents placed on record. As to the matter of limitation in the case, the date of default of debt by the CD was 02.09.2015 when the account of CD turned NPA in books of FC. Pursuant to that, the CD acknowledged the debt on multiple occasions last of which by way of letter dated 07.11.2020 requesting for OTS proposal. Hence on account of the acknowledgement, this petition filed on 15.11.2022, comes well within the period of limitation under the law. The debt amounting to Rs. 25,31,99,615/- as on 04.11.2022 is beyond the threshold limit stipulated under the IBC, 2016. The pending recovery proceedings before the DRT, and proceeding under the SARFAESI Act or any other proceeding will not bar the



financial creditor to initiate corporate insolvency proceeding against the corporate debtor.

7. 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.
8. So, in light of the case's facts, circumstances, and legal situation, we believe that this application, as submitted by the Applicant—Financial Creditor, must 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 (IB) No. 56/ KOB /2022, Kerala Financial Corporation, 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 **SREE SANKARA COMMUNITY FOR AYURVEDA CONSCIOUSNESS LIMITED**, (CIN: U85320KL1995PLC008998), 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. Dileep K P, IBBI Registration Number: IBBI/IPA-001/IP-P01310/2018-2019/12220, 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.



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- 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. 2,00,000/- (Two 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. CP (IB) No.56/ KOB /2022 to come up on 21.06.2023 for progress report.
11. 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.
12. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD  
Date: 2023.05.04 14:29:45 +05'30'

**Satya Ranjan Prasad**  
**Member (Technical)**

PANDIAN MOHAN RAJ Digitally signed by PANDIAN  
MOHAN RAJ  
Date: 2023.05.04 13:05:48 +05'30'

**P. Mohan Raj**  
**Member (Judicial)**

Signed on this the 4<sup>th</sup> day of May, 2023.

Rohit.