

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

CP(IB)/01/KOB/2022

(Under Section 9 of Insolvency and Bankruptcy Code, 2016)

Order delivered on: 28th April, 2022

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Hon'ble Mr. Anil Kumar B., Member (Technical)

Operational Creditor

M/s Uralungal Labour Contract Co-operative Society Ltd.,
Vatakara, Kozhikode,
Kerala- 673 102.

Versus

Corporate Debtor

M/s. Perambra Coconut Producer Company Limited,
CP. 11/449A, Chakkittapara P.O.,
Kozhikode, Kerala- 673 526.

Appearance (through video conferencing)

For Operational Creditor ... Shri. Sandeep Gopalakrishnan,
Smt. Jinnu Sara George,
Shri. Anand Vimal,
Shri. Anju Davis K., Advocates.

For Corporate Debtor ... *Ex-parte* (vide order dated 21.03.2022)

This CP(IB)/01/KOB/2022 has been filed invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called as **Code**) by M/s. Uralungal Labour Contract Co-operative Society Ltd., Vatakara, Kozhikode, Kerala- 673 102. (**Operational Creditor**) on 31.12.2021 against M/s. Perambra Coconut Producer Company Limited, CP. 11/449A, Chakkittapara P.O., Kozhikode, Kerala- 673 526. (**Corporate Debtor**). The Operational Creditor stated that the total amount of debt of the Corporate Debtor is Rs. 3,83,72,258/- (Rupees Three Crore Eighty-

CP(IB)/01/KOB/2022

Three Lakhs Seventy-Two Thousand Two Hundred and Fifty Eighty only), which includes the principal amount of Rs.2,46,79,955/-and interest amount of Rs. 1,36,92,303/-.

2. The brief facts of the case are as under: -
3. The Operational Creditor was engaged for contract of construction of building for the Corporate Debtor company at Chakkittapara, Kozhikode District, which was executed by way of an Agreement between the parties. The period of contract was 12 months from the date of signing the agreement. They have also entered into a Supplemental Agreement on 27.08.2016. The work as per the Agreement commenced on 26.10.2015 and was successfully completed on 30.07.2016.
4. It is stated that for the work done by the Operational Creditor they have raised several invoices against the Corporate Debtor. Out of the total transaction amount of Rs. 3,96,79,955/-, only Rs. 1,50,00,000/- has been paid by the Corporate Debtor till date. Therefore, the balance principal amount of Rs. 2,46,79,955/, with interest @ 12.50% is due to the Operational Creditor. The last payment done by the Corporate Debtor was as on 31.03.2018.
5. It is stated that while acknowledging the debt, a request for grant of 6 months' time for the payment was sought by the Corporate Debtor. The Operational Creditor granted the Corporate Debtor a period of 6 months for payment of debt which extended period expired on 26.08.2020. Thereafter the Operational Creditor issued a statutory notice dated 19.01.2021 under Section 8 of IBC, 2016 to the Corporate Debtor to a reply was sent by them. The Corporate Debtor has not raised any dispute with respect to the demand.

CP(IB)/01/KOB/2022

Further, the Corporate Debtor has acknowledged the debt due in the reply dated 15.03.2021 without any dispute on the demand raised. Subsequently an application under Section 9 of IBC was filed by the Operational Creditor as CP(IBC)/27/KOB/2021 before this Tribunal. Upon receipt of the aforesaid Application, the Corporate Debtor issued a letter dated 10.09.2021 requesting for a settlement without the interference of the court. Pursuant to that an online meeting was held on 27.09.2021 in which the Corporate Debtor promised to take immediate steps to mobilize funds towards the settlement of the dues after the meeting.

6. It is stated that based on the aforesaid developments Section 9 application filed as CP(IBC)/27/KOB/2021 was closed as withdrawn by Operational Creditor on 09.11.2021. In spite of the meeting held on 27.09.2021 and the withdrawal of the Application on 09.11.2021, no steps were taken by the Corporate Debtor towards the settlement as promised. Accordingly, another meeting was convened on 03.12.2021. However, the Corporate Debtor was unable to provide a definite period within which the debts could be settled. Therefore, the attempts for settlement failed.

7. On failure of settlement agreement, the Operational Creditor again issued a demand notice dated 17.12.2021 under Section 8 of IBC, 2016. However, the Operational Creditor did not receive any reply to the said notice and that, the Corporate Debtor did not raise any dispute under Section 8(2) of IBC, 2016. Hence, the present application has been filed by the Operational Creditor to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 9(6) of Insolvency and Bankruptcy Code, 2016.

8. Even though notice was served to the Corporate Debtor on this Petition they have not entered appearance and filed any reply. Hence, the Operational Creditor was directed to make paper publication in two new papers having wide circulation. In compliance to that, paper publication has been made and the Operational Creditor produced proof of paper publication. On 07.03.2022 a last opportunity was granted to the Corporate Debtor to file reply statement, if any. However, they neither appeared nor contested the matter. Hence the Corporate Debtor was set *ex-parte* on 21.03.2022.

FINDINGS

9. We have heard Mrs.Jinu Sara George learned counsel for the Operational Creditor and perused the whole case records including documents appended with this Petition. We have also gone through the evidence on record.
10. The Operational Creditor cooperative surety have established that they were engaged for the contract of construction of building for the Corporate Debtor Company at Chakkittapara, Kozhikode District, Kerala and that they were entitled to receive a balance amount of Rs. Rs. 3,83,72,258/- (Rupees Three Crore Eighty-Three Lakhs Seventy-Two Thousand Two Hundred and Fifty-Eight only) along with interest and that a default of non-payment had occurred. The Corporate Debtor did not enter appearance and contested the matter. Hence, the Corporate Debtor was set *ex-parte* by this Tribunal vide order dated 21.03.2022.
11. It is seen from the records that the date of default is 10.07.2017 and the last acknowledgement of debt was on 26.02.2020. In this respect, a decision rendered by the Hon'ble Supreme in

12. **Rajendra Narottamdas Sheth & Anr. Versus Chandra Prakash Jain & Anr** (Civil Appeal No.4222 of 2020) may be referred to. The relevant para is as follows: -

“21. In the instant case, there is no dispute that the date of default is 30.09.2014 and the application under Section 7 of the Code was filed on 25.04.2019. According to the Financial Creditor, Section 18 of the Limitation Act is applicable in view of the Corporate Debtor acknowledging its debt by way of letters, written in and after 2018, giving details of amount repaid, acknowledging the amount outstanding and requesting consideration of one-time settlement proposal. Sub-section (1) of Section 18 of the Limitation Act reads as under:

18. Effect of acknowledgement in writing. – (1) *Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed. It is no more res integra that Section 18 of the Limitation Act is applicable to applications filed under Section 7 of the Code. In case the application under Section 7 is filed beyond the period of three years from the date of default and the financial creditor furnishes the required information relating to the acknowledgement of debt, in writing by the corporate debtor, before the Adjudicating Authority, with such acknowledgement having taken place within the initial period of three years from the date of default, a fresh period of limitation commences and the application can be entertained, if filed within this extended period.”*

13. Considering the facts and circumstances of this case, we are of the considered opinion that the nature of Debt is an ‘Operational Debt’ as defined under Section 5 (21) of the Definitions under the Code. There is a “Default” as defined under Section 3 (12) of the Code on the part of the Corporate Debtor and that it is a fit case to admit and order initiation of CIRP against the Corporate Debtor. The application filed by the Operational Creditor is complete in all respects as required by law, and it clearly shows that the operational debt has not been paid by the Corporate Debtor.

14. The Operational Creditor has not proposed the name of any Resolution Professional to be appointed as the Interim Resolution Professional. Hence, we have decided to take a name from the panel issued by the IBBI.
15. The Application under Sub-Section (6) of Section 9 of I&B Code, 2016 is complete in all respects. Accordingly, the application filed under Section 9 of the Insolvency and Bankruptcy Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor is to be admitted and the following order has been passed: -

ORDER

16. **Application No. CP(IB)/01/KOB/2022** is **admitted** in terms of Section 9(5) of IBC, 2016 and moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following,

- 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 off 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.

17, It is further directed that the services to the corporate-debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period. The moratorium shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial regulator and to a surety in a contract of guarantee to a corporate debtor.

- a) The order of moratorium shall have effect from the date of this order till the 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.
- b) That the public pronouncement of the Corporate Insolvency Resolution Process shall be made immediately as specified under Section 13 of IBC.

18, This Bench hereby appoints **Mr.Prathap Pillai** having Registration No.**IBBI/IPA-003/ICAI-N-00371/2021-2022/13822- prathappillaiadv@gmail.com** residing at **BLRA-15, Bridge Lane, Medical College P. O., Uloor, Thiruvananthapuram, Kerala ,695010** whose name appears in the panel of IPs for appointment as Interim Resolution Professional for the period 01.01.2022 to 30.06.2022 for Kochi Bench, as the Interim Resolution Professional to carry out the functions as mentioned under IBC. The fee payable to IRP/RP shall comply with the IBBI Regulations/ Circulars/ Directions issued in this regard. The proposed IRP is directed to submit his

CP(IB)/01/KOB/2022

consent along with copy of AFA issued to him in the prescribed format within 2 days from the date of receipt of this order.

19. We direct the Operational Creditor to deposit a sum of Rs. 2 lakhs (Rupees Two Lakhs Only) with the Interim Resolution Professional within three days from the date of receipt of this order by them in order to meet out the initial expenses 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. This amount, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor. This amount may not be construed as the fee paid to the IRP.

20. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional.

Dated this the 28th day of April, 2022.

Sd/-

(Anil Kumar B.)

Member (Technical)

Sd/-

(Ashok Kumar Borah)

Member (Judicial)

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