

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

CP(IBC)/23/KOB/2024

*(Under Section 7 of the Insolvency and
Bankruptcy Code, 2016)*

***In the matter of Kumarakom Aqua Serene
Private Limited***

MEMO OF PARTIES:

**KERALA STATE INDUSTRIAL DEVELOPMENT
CORPORATION LIMITED**

T C 11/266 Keston Road, Kowdiar
Trivandrum, Kerala
PIN – 695003.

... Petitioner/ Financial Creditor

Versus

**KUMARAKOM AQUA SERENE PRIVATE
LIMITED**

No.4/125, Vettoor House,
Kudavechoor P O, Vaikom, Kottayam
Kerala, Pin- 686144.

... Respondent/Corporate Debtor

Order delivered on: 16.04.2025



Coram:

Smt. Madhu Sinha

Shri. Vinay Goel

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

Appearances:

For the Petitioner : Mr. Akhil Suresh, Advocate

For the Respondent : Mr. P B Sahasranaman, Advocate

ORDER

Per Coram:

1. This petition is filed by M/s Kerala State Industrial Development Corporation Limited (hereinafter referred as the "Financial Creditor" or "Petitioner") on 09.05.2024 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"), for initiating the Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP"), declaring moratorium and for appointment of Interim Resolution Professional (hereinafter referred to as "IRP"), against the Corporate Debtor M/s Kumarakom Aqua Serene Private Limited.
2. The total amount claimed to be in default as per Part-IV of the petition is Rs. 26,08,43,902/- (Rupees Twenty-Six Crore Eight Lakh Forty-Three Thousand Nine Hundred and Two Only) as of 31.03.2024.



3. The Corporate Debtor was incorporated on 27.02.2004, having CIN: U55101KL2004PTC016902 under the Companies Act, 1956. The registered address of the Corporate Debtor is building no 4/125, Vettoor house, Kudavechoor P.O, Vaikom, Kottayam, Kerala, Pin:686144. Therefore, this Bench has jurisdiction to deal with this petition. A copy of the master data of the Corporate Debtor has been attached as Annexure-A1 with this petition.

4. The present authorized share capital of Corporate Debtor is Rs. 8,10,00,000/- (Rupees Eight Crores Ten Lakhs only) divided into 8,10,000 equity shares of Rs. 100/- each and the paid-up capital of the company is Rs.8,10,00,000/-(Rupees Eight Crores Ten Lakhs only) divided into 8,10,000 equity shares of Rs. 100/- each.

Brief facts of the case are as follows: -

5. The Corporate Debtor approached the Financial Creditor for availing a Term Loan of Rs. 4,96,90,000/- towards part financing the project cost for setting up a resort at Kumarakom. In the 269th Board Meeting on 11.07.2010, the Financial Creditor sanctioned a Term Loan of Rs. 4,96,90,000/- to the Corporate Debtor, as per the Sanction Letter dated 05.08.2010 and Loan Agreement dated 12.08.2010. The Corporate Debtor executed a Deed of Hypothecation and Deed of Guarantee on 12.08.2010 and created an Equitable Mortgage by Deposit of Title Deeds on 13.08.2010 over 120.64 Ares (2 Acres 98 Cents and 100 Sq. Links) in favor of the Financial Creditor.

6. Upon the request of the Corporate Debtor, the Financial Creditor, in its 284th Board Meeting held on 31.07.2013, rescheduled the term loan of Rs.



4,96,90,000/- into 20 equal quarterly installments w.e.f. April 2014. Additionally, the Corporate Debtor sought an Additional Term Loan of Rs. 2,98,00,000/- for meeting cost overruns in the existing project.

7. In its 284th Board Meeting on 31.07.2013, the Financial Creditor sanctioned an Additional Term Loan of Rs. 2,98,00,000/- modifying the existing loan, as per the Sanction Letter dated 09.09.2013 and Loan Agreement dated 03.10.2013. The Corporate Debtor executed a Deed of Hypothecation and Deed of Guarantee on 03.10.2013, extending the charge on existing assets. An Equitable Mortgage by Constructive Deposit of Title Deeds was created on 04.10.2013.
8. The Term Loan of Rs. 4,96,90,000/- was disbursed in 8 tranches, and the Additional Term Loan of Rs. 2,98,00,000/- was disbursed in 5 tranches.
9. As per the loan agreements, the Corporate Debtor was required to repay the loan in installments after the moratorium period and pay interest as prescribed, compounded quarterly.
10. The Corporate Debtor committed a serious breach and defaulted in repaying the loans along with interest. Despite repeated demands, the Corporate Debtor exhibited an unwillingness to repay the due amount.
11. In the 95th Executive Committee Meeting of the Financial Creditor on 01.03.2016, various concessions were granted, and the remaining balance of Rs. 1,46,00,000/- from the Additional Term Loan was released on 01.10.2016. As a condition, the promoters were required to pledge 100% of their shares in the Corporate Debtor, which was executed on 10.05.2016.



12. The project became fully operational in December 2016, yet the Corporate Debtor continued defaulting in repayments.
13. Due to extensive loan defaults, a default review meeting was held on 15.12.2018, where the Corporate Debtor's promoter agreed to remit Rs. 10,000/- daily from 22.12.2018. The Corporate Debtor later proposed a One-Time Settlement (hereinafter referred to as the "OTS").
14. In the 320th Board Meeting on 28.01.2021, an OTS of Rs. 11,45,40,370/- was approved under the COVID Amnesty Scheme, subject to a 10% upfront payment within one month. However, the Corporate Debtor failed to comply, leading to OTS cancellation via Letter No. KSIDC/TVM/SCY/8/320, dated 11.02.2021. A second OTS of Rs. 11,49,17,219/- was sanctioned in the 323rd Board Meeting on 03.08.2021, but the Corporate Debtor once again failed to remit 10% of the amount or conclude the OTS within 31.12.2021. The OTS was cancelled accordingly.
15. The last repayment made by the Corporate Debtor was Rs. 15,000/- on 14.08.2019. In the 325th Board Meeting on 22.01.2022, considering the long-pending default of Rs. 20,44,29,000/- as of 31.12.2021, Financial Creditor decided to initiate IBC proceedings. The Financial Creditor filed an application before this Tribunal in March 2022. On 23.06.2022, this Tribunal ordered CIRP against the Corporate Debtor.
16. The Corporate Debtor then filed a writ petition before the Hon'ble High Court of Kerala, seeking an extension of OTS until 31.03.2024. The Hon'ble High Court, in its order dated 28.03.2022, directed that upon depositing 10% of the OTS amount, the OTS shall be considered.



17. The Corporate Debtor deposited Rs. 1,14,54,000/- on 31.03.2022 and sought further extension. The Financial Creditor, in the 328th Board Meeting on 29.06.2022, granted time till 30.09.2022 to remit 40% of the OTS and the balance by 31.12.2022 with an 8.75% interest.
18. To facilitate the Corporate Debtor in raising funds, the Financial Creditor agreed to withdraw the CIRP proceedings without executing a Memorandum of Settlement. Accordingly, on 08.12.2022, the Corporate Debtor withdrew from the CIRP proceedings. However, no payment was made.
19. Despite multiple extensions, the Corporate Debtor continued defaulting. The matter was even raised before the CM's Grievance Redressal Mechanism, but no payments were made by 31.03.2023.
20. In April 2023, the Corporate Debtor sought an OTS extension from the Hon'ble High Court of Kerala, which, on 11.04.2023, directed to remit 20% of the outstanding amount within one month. However, the Corporate Debtor failed to make the payment by 11.05.2023.
21. Subsequently, on 20.05.2023, the Corporate Debtor informed the Financial Creditor that a corporate house had promised to settle the dues under the OTS. The Financial Creditor, in its 333rd Board Meeting, extended the deadline to 31.12.2023. Despite regular follow-ups, the Corporate Debtor failed to settle the dues.
22. As of 31.12.2023, the total outstanding loan amount of the Corporate Debtor stood at Rs. 25,17,86,000/-.

23. The C&AG Inspection Audit Wing, in its Audit Enquiry No. AENQ395723, dated 26.10.2023, remarked that the Financial Creditor had granted undue favor to the Corporate Debtor.
24. As of 31.03.2024, the Corporate Debtor has an outstanding default amount of Rs. 26,08,43,902/-.
25. The Respondent filed their reply stating this petition is defective and lacks proper authorization. The Petitioner, claiming to file on behalf of the Financial Creditor, has failed to produce the necessary authorization under Form No. 1 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Additionally, as per the Master Data, the purported authorized person is not a valid signatory of the Petitioner. And stated that this petition is not maintainable against the Corporate Debtor, as it is barred by the law of limitation and the principle of res judicata. As per the petitioner, the alleged date of default of the loan is 15.08.2019, but no documents are filed along with this petition to substantiate either the existence of a financial debt or the date of default.
26. The Respondent stated that the Petitioner has reinitiated proceedings on the same cause of action previously raised under Section 7 of the IBC, 2016, in CP(IB)/22/KOB/2022. This Tribunal admitted the petition on 23.06.2022, initiating CIRP and appointing E.P. Madhusoodhanan as the Interim Resolution Professional. However, while allowing the withdrawal of CIRP, the Tribunal expressly denied liberty to refile. The Petitioner has now suppressed these facts and filed the present petition in violation of res judicata, without appealing the previous order, which has attained finality.



27. The Corporate Debtor, incorporated on 27.02.2004, operates in the hospitality sector. It secured a loan in 2010, but the Petitioner imposed excessive interest and penal charges from the first installment. The Petitioner claims to have sanctioned Rs. 4.96 crore and an additional Rs. 2.98 crore in 12 tranches, but the latter was not fully disbursed. Instead, Rs. 1.40 crore was adjusted toward interest without deducting it from the total due. Key loan details, including disbursement dates, repayment schedule, and interest rates, remain undisclosed. Furthermore, the Petitioner never issued a demand notice, undermining its default claim.
28. Added that the Corporate Debtor faced severe financial distress due to demonetization (2016), Kerala floods (2018), and COVID-19 (2020), yet the Petitioner disregarded these challenges. Notably, in 2017, the Petitioner appointed Mr. Kannikulathil Gopalan Ajithkumar as a Nominee Director, who actively participated in board meetings and decision-making.
29. Seeking financial relief, the Corporate Debtor proposed an OTS, but the Petitioner refused to waive unjustified charges. The claim that OTS relief was granted under the COVID Amnesty Scheme is unsubstantiated, as the Petitioner's annual reports (2019-2021) do not reflect any such approval, and no formal communication regarding the scheme was provided. Despite ongoing OTS discussions, the Petitioner filed a Section 7 petition on 05.03.2022, disrupting the Corporate Debtor's restructuring efforts. The Kerala High Court, upon the Corporate Debtor's plea, directed a 10% loan payment, which was made on 30.03.2022. Yet, the Petitioner continued proceedings, leading the Corporate Debtor to seek a stay. The



High Court then instructed the Petitioner to decide on the OTS request and barred NCLT from implementing any decision until 28.06.2022.

30. And further stated that the Petitioner ignoring these directions, proceeded with CIRP but later admitted the Section 7 application was premature and withdrew it without liberty to refile. However, these facts have been deliberately concealed in the present petition.

31. The Petitioner has filed their rejoinder, stating that the present petition has been filed by the Deputy General Manager (Legal), who is duly authorised and competent to initiate proceedings under Section 7 of the IBC, 2016. The Petitioner stated Section 7(3)(a) provides an "OR" clause, meaning the record of default is not mandatory, and the Petitioner can submit any other evidence of default as specified. Moreover, the Petitioner asserts that the NESL record of default has already been submitted along with the petition.

32. The Petitioner stated that the petition is within the limitation period, citing the Corporate Debtor's acknowledgment of liability in its writ petition before the Hon'ble Kerala High Court in WP(C) No. 12764 of 2023. In its judgment dated 11.04.2023, Annexure A-10, the Hon'ble High Court of Kerala recorded that the Corporate Debtor had admitted to the liability and had further promised to pay 20% of the entire liability, which is an acknowledgment of debt. Additionally, the Petitioner relies on the Hon'ble Supreme Court's Suo Moto order, which excludes the period from 15.03.2020 to 28.02.2022 from the limitation period.

33. The Petitioner, regarding the applicability of res judicata, stated that it is a common law principle that prevents the re-litigation of issues already



decided between the same parties. As per Section 11 of the Civil Procedure Code, res judicata applies only if (a) the matter directly and substantially in issue in the subsequent proceedings is the same as in the former suit and (b) the former suit was decided on merits and has attained finality. Accordingly, res judicata does not apply when a case is dismissed on technical grounds, such as lack of jurisdiction, procedural defects, improper valuation, failure to furnish security, or premature filing. Hence, the dismissal of the previous petition does not preclude the present petition under Section 7 of the IBC, 2016.

34. The Petitioner asserted that the Respondent suppressed material facts, including the Annexure A-10 judgment, wherein the default was admitted, and a commitment to pay the liability was made.

35. At the time of final hearing, the Learned Counsel for the Respondent sought an opportunity for compromise and submitted before this Tribunal that he is ready to settle the matter and sought 15 days' time to settle the debt. This Tribunal assured the Learned Counsel for the Respondent that this Tribunal would not pass any final order for 15 days from the date of the final hearing awaiting the outcome of their settlement. The Learned Counsel for the parties argued on 27.03.2025, and today it's 16.04.2025, date and time so sought for settlement has lapsed. There is no memo or application to apprise this Tribunal about any alleged compromise/settlement or any effort made by the Respondent after 27.03.2025.

36. Under the given circumstances, this Tribunal opts for delivering final judgment. At the time of the final hearing, the Learned Counsels for the parties argued as under



“Counsel for the applicant argued on the lines of the petition, whereas the counsel for the respondent submitted that this application is barred by the principle of res judicata as the Petitioner earlier withdrew the Petition and sought liberty to file fresh proceedings, but this Tribunal declined such liberty. He further submitted that the Petitioner failed to supply a prior copy of this Petition to the Respondent. So, on this ground also, their application merits dismissal. Further, counsel for the Respondent submitted that the Petitioner has failed to place the record of default, as such application merits dismissal*. In the rebuttal, Counsel for the Petitioner referred pages 96 and 168 and submitted that he has already mentioned all these facts in the petition.”*

*(*wrongly typed as “dismissed” in the order dated 27.03.2025)*

37. It is noted that earlier petition CP(IBC)/22/KOB/2022 was filed by the Petitioner against the Respondent for the same debt, which was allowed by this Tribunal vide order dated 23.06.2022, and Mr EP Madhusoodhanan was appointed as the IRP. In the meantime, the Respondent approached the Hon’ble High Court of Kerala, and the Hon’ble High Court was pleased to grant relief to the Respondent in WP(C) 18247 of 2022. The relevant portion reads as follows.

“4. By Ext.P1 judgment, this Court had permitted the petitioner to remit 10% of the OTS amount and had directed the respondent to consider petitioner's application for OTS, if such remittance is made. The petitioner asserts that the direction in Ext.P1 is complied with and the Board of the Corporation is willing to consider his request for OTS.

5. Indisputably, the petitioner's request for OTS is being considered in the Board meeting of the respondent scheduled to be held on 28.06.2022. If so, it is only appropriate to defer the proceedings before the NCLT till such time, since orders passed by the NCLT in the meanwhile may



substantially prejudice the interest of the petitioner and affect the decision to be taken by the Board.

In such circumstances, the writ petition is disposed of, directing the Board of the Respondent corporation to take a decision on the request for OTS submitted by the petitioner in the meeting scheduled on 28.06.2022. the decisions, if any, taken by the NCLT in the meanwhile, shall not be implemented till 28.06.2022.”

38. Subsequent to the order passed by the Hon'ble High Court, the Petitioner filed an application under section 12 A of the Code to withdraw the Section 7 petition and sought liberty to initiate litigation with the same course of action if needed. Admittedly, in this case, this Tribunal, vide order dated 08.12.2022, refused to grant liberty as sought for to initiate fresh litigation against the Respondent for the same cause of action. The order of 08.12.2022 reads as under

This is an application for withdrawal of petition admitted into CIRP filed under Section 7 of IBC, 2016. This application is filed under Section 12A of IBC, 2016 R/W Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 along with prayer to grant liberty to Financial Creditor to approach this Tribunal in order to revive and restore the Application CP(IB)/22/KOB/2022 if in any case of any default made by Corporate Debtor to adhere to the conditions for OTS settlement within 31.12.2022 or to file a fresh section 7 application for initiating CIRP against the Corporate Debtor.

It is noted that this application has been filed after constitution of the Committee of Creditors. The applicant states that the Board of the Financial Creditor at its meeting held on 24.09.2022 and Committee of Creditors meeting dated 26.10.2022 with 100% voting decided to withdraw the petition.



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Further, IA(IBC)/433/KOB/2022 has been filed by the RP stating that the Financial Creditor has paid the Resolution Professional the cost involved in the CIRP including RP fees.

Taking into consideration of the submissions made by the RP and also based on the resolution passed on 26.10.2022 by the Committee of Creditors as per Section 12A of IBC, 2016 read with Regulation 30A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 for the withdrawal of the CIRP and also in view of the fact that the fees of the RP has been paid in full, this application stands allowed and, in the circumstances, CP(IB)/22/KOB/2022 stands withdrawn. The CIRP initiated against the Corporate Debtor stands withdrawn and the CD is relieved from the rigors of the CIRP Proceedings. Consequently, the RP/Applicant is directed to hand over the management to the Board of Directors whose powers stood suspended by virtue of the initiation of the CIRP by this Tribunal while admitting the Petition CP(IB)/22/KOB/2022. However, we are not inclined to grant liberty as prayed for by the applicant.”

39. Now, upon failure of OTS, the Petitioner has filed this Section 7 petition, and the Respondent has taken prime defence of maintainability of this petition on the basis of Res Judicata. Accordingly, now this Tribunal is to decide whether the principle of Res Judicata would be a hurdle to the petitioner pursuing this petition. Having heard both the parties, we are of the opinion that the Respondent approached the Hon'ble High Court of Kerala and submitted their intention for settlement, and sought extension of time for repayment under the OTS settlement, at the instance of the Respondent, the Hon'ble High Court, in its writ jurisdiction, granted concessions as sought by the Respondent. So, the order passed by the Hon'ble High Court was at the instance of the Respondent and in our opinion, the Petitioner withdrew the earlier



Petition only after the order of the Hon'ble High Court, vide which certain relief in favour of the Respondent was granted. It was for the Respondent to pay the amount, and the Respondent failed to place on record any material that the Petitioner did anything that resulted in to the failure of the OTS concession. Under these given circumstances, the defence of the Respondent would be hit by the doctrine of estoppel, and as far as withholding the liberty to file a fresh petition by this Tribunal is concerned, that would not be a hurdle in the way of the Petitioner to pursue this petition. In a broader perspective and object of IBC, 2016, if we allow such type of defence, it would convey a wrong message to the society, and it would be against the spirit of IBC 2016 itself as its object is resolution. The Petitioner filed the withdrawal application only with a view to resolve the issue, the second petition would be again for resolution only. The other grounds taken by the Respondent are hyper-technical about non-serving the copy of the petition, and such grounds would not be tenable once the Respondent filed their reply.

40. Although at the time of the final hearing, the Learned Counsel for the Respondent did not argue but in the defence alleged about the competence of signatory to file this Company Petition on behalf of the Petitioner/Financial Creditor. So this Tribunal opts to consider this aspect also. The Petitioner, along with the rejoinder, has placed on record the resolution passed by the Petitioner/Financial Creditor authorising Ms. V. R. Usha to initiate proceedings on behalf of them, which reads as follows

"Resolved that consent of the Board of Directors be and is hereby accorded to Smt. V. R. Usha, DGM (Legal) and/or Shri. P. Anoop, Deputy Manager (Legal), to represent the Corporation before the NCLT, NCLAT, Supreme Court,

IRP/RP/Liquidator or such other Forum and to sign and execute various Vakalathnama, Affidavits, Applications, Petitions, Objections, Written Statements, Claim Form or such other Documents as may be required from time to time, on behalf of the Corporation which are required under The Insolvency and Bankruptcy Code, 2016".

41. So, the objection taken by the Respondent has been duly met with by the Petitioner and it can be said that the petition has been filed by the Financial Creditor through its duly authorised person

42. In the backdrop of above, we are placing emphasis on the decision of Hon'ble NCLAT in *Desh Bhushan, Erstwhile Director of Angel Promoters Private Limited versus Abhay Kumar, IRP of Angel Promoters Private Limited & Ors (Company Appeal (AT)(Ins)No 124 of 2024*, it was held that,

19. We are not at all impressed with the argument of the Appellant which has been raised with the support of the decision in the case of Raj Singh Gehlot (Supra) that the application under Section 7 cannot be filed on the basis of the settlement because the said judgment is not applicable. In the case of Raj Singh Gehlot (Supra) the petition under Section 7 was filed on the basis of settlement agreement dated 07.04.2017 whereas in the present case, the first petition was not filed on the basis of settlement agreement rather it was filed on the basis of the debt due and default committed by the CD. The debt and default was admitted by the Corporate Debtor and hence, approached the Financial Creditors for entering into a settlement to make the payment in instalments through post-dated cheques both in regard to the principal as well as interest component. The Financial Creditors believed the Corporate Debtor and entered into the agreement and further on the asking of the CD filed a joint application in the first petition not only to bring on record the settlement but also to withdraw the first petition being sanguine of the fact that CD would keep its words and shall honour all the post-dated cheques in time but they were not aware of the intention of the CD as it had not made payment beyond Rs. 1,10,00,000 and



were still in the arrears of more than Rs. 3 Cr. The Financial Creditor then filed the second petition of the reduced debt about which the default is not in question, therefore, the Adjudicating Authority has rightly admitted the application.

20. At this stage, we would like to observe that if this kind of tricks, played by the CD with the FC are allowed and the plea raised by the Appellant is accepted that the second petition on the ground of settlement agreement is not maintainable then it would give a premium to the unscrupulous CD to get the petition filed under Section 7 withdrawn on the basis of the settlement which was not to be ultimately followed. Definitely, this kind of attitude and act on the part of the CD is not appreciated.

43. The Hon'ble Supreme Court in Prem Kishore & Ors versus Brahm Prakash & Ors, it was held that,

34. The general principle of res judicata under Section 11 of the CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff's appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suitor was not proved, either wholly or in part and to pass the decree accordingly.



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55. *The moot question is whether the eviction petition was dismissed for default which dismissal would certainly bar a fresh suit if instituted on the same cause of action. The words, which we have quoted above, certainly do not mean dismissal either on merits or on default. It was argued before us that the order should only be taken to mean what an order under Order 17 can possibly be and nothing else. We are not impressed by such submission. The order did not purport to be one of dismissal for default or on merits and it cannot be taken to mean other than what it purported to be. It is in ordinary phraseology; not legal phraseology and it cannot be divested of its ordinary meaning. Its ordinary meaning is that the proceeding was closed and the suit would not count as a pending one. The later description would be redundant if the order was one of final disposal of the suit. The order did not purport to be a final disposal of the suit. It merely stopped the proceedings. It did nothing more. This is not final decision of the suit within the meaning of Order 9 Rule 8 and Order 17 Rule 3 resply of the CPC.*

44. The present petition establishes the existence of a financial debt as claimed in Part IV of this petition and the occurrence of default by the Corporate Debtor and the that the liability remains outstanding. The date of default as stated in Part IV of the petition is 15.08.2019; however, in view of the OTS proposal, communications between the Petitioner and the Corporate Debtor establish a continuous cause of action. Accordingly, the debt and default falls within the limitation period. The debt outstanding, as stated in Part IV of the petition, amounts to Rs. 26,08,43,902/- as of 31.03.2024, which exceeds the statutory threshold of One Crore Rupees.

45. In the light of the above facts and circumstances, it is, hereby ordered as follows:

a) The Petition bearing CP(IBC)/23/(KOB)/2024 filed **M/s Kerala State Industrial Development Corporation Limited**, the



Petitioner/Financial Creditor, under section 7 of the Code for initiating CIRP against **M/s Kumarakom Aqua Serene Private Limited**, the Respondent/Corporate Debtor, is hereby admitted.

- b) As a consequence of the CP(IBC)/23/(KOB)/2024 being admitted in terms of Section 7 of the Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/Corporate Debtor as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.
- c) The Petitioner/Financial Creditor has proposed the name of **Mr P T Joy**, having his Registered Office at 34/306C, First floor, J B Plaza, Edappally-Tripunithura Road, Padivattom, Edappally P O, Ernakulam, Kerala, Pin 682024 as the IRP. The registration number is IBBI/IPA-001/IP-P-02239/2021-2022/13601. The Insolvency Professional has filed his written communication in **Form 2**, as per the requirement of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by IP that no disciplinary proceedings are pending against him with the Board or in the Indian Institute of Insolvency Professionals of ICAI. Accordingly, it satisfies the requirement of Section 7(3)(b) of the code. Hence, we appoint **Mr P T Joy** as the IRP of the Respondent/Corporate Debtor.
- d) In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code.



The expression 'immediately' means within three days, as clarified by the Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- e) During the CIRP period, the management of the Respondent/Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the Code. The officers and managers of the Respondent/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. There shall be no future opportunities in this regard.
- f) The IRP is expected to take full charge of the Respondent/Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- g) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Respondent/Corporate Debtor.
- h) The Petitioner/Financial Creditor shall deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors.
- i) In terms of Section 7(7) of the Code, the Registry is hereby directed to communicate a copy of the order to the Petitioner/Financial Creditor,



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the Respondent/Corporate Debtor, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Respondent/Corporate Debtor and specific mention regarding admission of this petition must be notified.

46. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.
47. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Learned Counsels for information and for taking necessary steps.
48. A Certified Copy of this order may be issued, if applied for, upon compliance with all requisite formalities

Sd/-
MADHU SINHA
(MEMBER TECHNICAL)

Sd/-
VINAY GOEL
(MEMBER JUDICIAL)

Signed on this the 16th day of April, 2025.

Krishna /LRA



Certified to be True Copy-

Deputy Registrar
National Company Law Tribunal
Kochi Bench