

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

**IBA/49/KOB/2019**

**(Under Section 7(4) of Insolvency and Bankruptcy Code, 2016)**

**Order delivered on 20.12.2019**

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

**In the matter of**

V.T. John,  
Palakkamannil House, Kalathipady Desom,  
Vijayapuram Village,  
Vadavathoor PO, Kottayam Taluk  
Kerala-686010.

.... Financial Creditor/Applicant  
**Vs.**

M/s Bristo Foods Private Limited,  
Registered Office,  
Plot No.VIII/636/E, NIDA  
Menonpara Road, Kanjikode  
Palakkad-678621, Kerala

.... Corporate Debtor/Respondent

For Operational Creditor/Applicant: Mr.Ashish Mohan, Advocate

For Corporate Debtor/Respondent : None present

**ORDER**

1. The Financial Creditor/Applicant viz. 'V.T JOHN' (hereinafter as '**Financial Creditor**') has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as '**Rules**') in the capacity of "Financial Creditor" on 19.11.2019 by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as '**Code**') against '**BRISTO FOODS PVT LTD**' (hereinafter as '**Corporate**

**Debtor'**). The registered office of the Corporate Debtor is stated to be Plot No. VIII/636/E, NIDA, Menonpara Road, Kanjikode, Palakkad-678621, Kerala.

2. The Financial Creditor had advanced an amount of ₹ 31,00,000/- (Rupees Thirty-One Lakhs Only) in the year 2007-2008 in several tranches., as it is evident from the ledger account of the Corporate Debtor. On receipt of the entire money as loan the company executed a deed of guarantee. It is agreed by the Corporate Debtor in the deed of guarantee that he shall repay within six quarterly instalments, beginning from 01.01.2011 and shall pay an interest of 10% per annum on the amount outstanding. Three signed blank cheques were given by the Corporate Debtor to the Financial Creditor as a guarantee for the loan. The Financial creditor never presented the cheques for clearance owing to the personal relationship and assurance that the Corporate Debtor will clear the dues at the earliest. Eventually these cheques become stale and it could not be presented thereafter. The Corporate Debtor had acknowledged the debt over the years and disclosed the same in the Financial Statements up to 31.03.2017. (Annexure 1.4 in the application) whereas the Financial Statement as on 31.03.2018 the Corporate Debtor has reclassified and shown it as nil. (Annexure 1.5).
3. The Financial Creditor had made several correspondences to Corporate Debtor demanding the repayment, the Corporate Debtor again assured the Financial Creditor that he will repay the amount and requested not to initiate any legal proceedings. The total amount of debt being ₹ 87,71,565/- (Rupees Eighty-Seven Lakhs Seventy-One Thousand Five Hundred and Sixty-Five Only) i.e., [31,00,000/- (principal amount) +56,71,565/- (interest amount)]. The Financial

Creditor had issued a legal notice to the Corporate Debtor on 25.07.2018 to which the Corporate Debtor had neither replied nor disputed.

4. The Financial Creditor stated that the Corporate Debtor has committed a 'default' in payment of the debt. Hence the Financial Creditor filed this petition and prayed for admission and initiating Corporate Insolvency Resolution Process under Section 7 of IBC.

### **FINDINGS**

5. The Registry of this Tribunal has issued a notice to the Corporate Debtor intimating about the application filed under the Insolvency and Bankruptcy Code Under Section 7 and directed the Corporate Debtor to appear before the Tribunal on 04.12.2019. The notice to Corporate Debtor was duly served. The Corporate Debtor has not appeared before this Tribunal. Therefore, the case has decided *ex parte*.
6. The Financial Creditor falls under section 5(7) can file an application for initiating corporate insolvency resolution process against a Corporate Debtor before this Adjudicating Authority when the default has occurred. No doubt the debt claimed is a financial debt as defined under section 5(8) of I & B Code.
7. The Financial Creditor has recommended the name of **Jasin Jose**, residing at **Ponmattam, Madaserry House, Mookkannoor, P.O Ernakulam-683577**, a registered Insolvency Professional having **registration No. IBBI/IPA- 001/IP-P00695/2017-2018/11225 (Email id- [jasinjoseponmattam@gmail.com](mailto:jasinjoseponmattam@gmail.com))**, for appointment as Interim Resolution Professional (IRP). The IRP proposed also has filed a declaration in Form 2 affirming that he is a registered insolvency

professional and no disciplinary proceedings are pending against him. Therefore, the application on behalf of Financial Creditor is complete.

### ORDER

8. In the aforesaid background, and after thoroughly perusing the records, we are of the view that, the application filed on behalf of Financial Creditor is complete. Therefore, this application under Section 7(5)(a) of the I & B Code, 2016 deserves to be **Admitted**.
9. Accordingly, the IRP proposed by the Financial Creditor, **Jasin Jose**, residing at **Ponmattam, Madaserry House, Mookkannoor, P.O Ernakulam, Kerala- 683577**,, a registered Insolvency Professional having **registration No. IBBI/IPA- 001/IP-P00695/2017-2018/11225** (**Email id- [jasinjoseponmattam@gmail.com](mailto:jasinjoseponmattam@gmail.com)**), is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.
10. Having admitted the Petition/Application, 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.
11. However, the supply of essential 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.

12. 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.
13. That the Interim Resolution Professional shall perform the duties as assigned under **Section 15** and **Section 18** 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.
14. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order of admission.
15. Communicate a copy of this order to the Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.

Dated this the 20<sup>th</sup> day of December, 2019

Sd/-

**(Veera Brahma Rao Arekapudi)**  
**Member (Technical)**

Sd/-

**(Ashok Kumar Borah)**  
**Member (Judicial)**