IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.02
C.P. (IB) No.306/BB/2025

IN THE MATTER OF:

M/s Daaksh Jute LLP ... Petitioner

Vs.

M/s. Karnataka Food and Civil Suppliers Corporation Limited ... Respondent

Petition under Section 9 of IBC, 2016

Order delivered on: 12.10.2026

CORAM:

SHRI SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

COUNSELS PRESENT:

For the Petitioner : Shri D.N. Sharma, Sr. Counsel
For the Respondent : Shri Ranganatha Chenna

ORDER

1. Heard Ld. Sr. Counsel/Counsel for the parties.
2. Vide separate Order, the **Company Petition has been allowed**, and the **Corporate Debtor is admitted to CIRP**. IRP is appointed, who is expected to file his consent and credentials in two weeks.
3. Taking into account the peculiar facts of this case and the parties involved, and in the hope that parties will be able resolve the issues, the operation of admission Order is kept in abeyance till the end of this month, i.e. 31.10.2026 to enable them to negotiate and resolve.
4. In the event, it is not worked out by then, the Admission Order shall come into effect from 01.11.2026, with inter alia, rigours of the moratorium.
5. List on **09.12.2026** for further proceedings/IRP reports.

-Sd/-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd/-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH
(Exercising powers of Adjudicating Authority under The Insolvency and Bankruptcy Code, 2016)

CP (IB) No. 306/BB/2025
U/s. 9 of the IBC, 2016 read with Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

DAAKSH JUTE LLP
Administrative Office: 10,
Dr. Rajendra Prasad Sarani (Clive Row),
2nd Floor, Kolkata – 700001 - Operational Creditor/Petitioner

VERSUS

KARNATAKA FOOD AND CIVIL SUPPLIES CORPORATION LIMITED
Regd. Office: 16/1, Millers Tank
Vasanthnagar, Bengaluru – 560052 - Corporate Debtor/Respondent

Order delivered on: 12.10.2026

CORAM: **Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)**
Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

COUNSELS PRESENT

For the Petitioner	:	Sh. D N Sharma, Senior Advocate Mr. Theerthesh B.S., Ms. Shreya Chowdhary
For the Respondent	:	Sh. Ranganatha Chenna, Advocate

O R D E R

1. The present Petition has been filed by **Daaksh Jute LLP** on 20.11.2025, an Operational Creditor ("OC"), under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC"/"Code"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against **Karnataka Food and Civil**

Supplies Corporation Limited, the Corporate Debtor ("CD"), in respect of an alleged operational debt of **Rs.19,25,01,796.48**, comprising principal amount of Rs.14,55,63,931, interest at the rate of 24% per annum and security deposit of Rs.93,24,145.71 with date of default being **03.08.2024**. The OC is an MSME engaged in the manufacture and supply of jute gunny bags.

2. The brief facts of the case, as submitted by the OC, are as follows:

   a. The Corporate Debtor, a State Government Company had invited tender dated **18.12.2023** for supply of jute gunny bags of different specifications. The OC had participated in the tender and emerged as the **L2 bidder**.

   b. The CD, vide communication dated **15.04.2024**, informed the OC that although it had emerged as the L2 bidder, the contract entered into with the L1 bidder has been terminated and the CD intended to procure jute gunny bags from the OC. The OC was accordingly requested to convey its willingness to undertake the supply of B-Twill New jute gunny bags of 770 gm and Twine Jute Threads from eligible gunny bag manufacturers who can provide high quality B-Twill new jute gunny bags suitable for filling 50 kg of Ragi as per the latest BIR specification at the rate quoted by L1, to various purchase centres/storage godowns across Karnataka state as entrusted by KFCSCL for KMS 2023-24 and vide email dated **16.04.2024**, the OC had communicated its willingness to supply the jute gunny bags.

   c. Subsequently, on 22.04.2024, the CD had addressed a communication to the Government of Karnataka seeking approval for entering into an arrangement with the OC for procurement of the required jute gunny bags and the Government of Karnataka, vide order dated 23.04.2024, accorded approval for procuring jute gunny bags of 580 grams and 775 grams specifications from the OC.

   d. Pursuant to the aforesaid approval, an **Agreement dated 24.04.2024** was entered into between the OC and CD for supply of jute gunny bags

weighing 775 grams and 580 grams. According to the OC, the Agreement itself records that the CD had obtained approval from the State Government for procurement of the said gunny bags from the OC. The Agreement further provided for payment to be made by the CD within 30 days of submission of invoices and on the same date, i.e., **24.04.2024**, the CD had issued a Work Order to the OC for supply of **10 lakh jute gunny bags of 775 grams and 10 lakh jute gunny bags of 580 grams.** In terms of the said Work Order, the OC supplied **10,00,713 jute gunny bags weighing 775 grams and 9,79,400 jute gunny bags weighing 580 grams** to the CD and raised invoices in respect of the supplies, copies whereof have been placed on record.

e. On 10.06.2024, the Government of Karnataka issued a further order informing the concerned Government Departments, including the Finance Department, regarding the requirement for procurement of additional jute gunny bags on account of the farmers' protest and permitted procurement of both 775 gram and 580 gram gunny bags and pursuant thereto, a second Work Order dated **11.06.2024** was issued by the CD for supply of **8 lakh jute gunny bags weighing 775 grams and 12 lakh jute gunny bags weighing 580 grams**.

f. The OC states that pursuant to the second Work Order dated 11.06.2024, it supplied 7,99,262 jute gunny bags weighing 775 grams and 10,42,250 jute gunny bags weighing 580 grams and raised corresponding invoice. The supplies of jute gunny bags were duly received and accepted by the CD and there was no objection regarding the quality, quantity or specifications of the jute gunny bags supplied and the CD has also utilised/consumed 7,99,262 jute gunny bags weighing 775 grams and 10,42,250 jute gunny bags weighing 580 grams supplied as per the second Work Order dated 11.06.2024 but the payment towards the supplies was not made.

g. The OC has filed the ledger account and other documents to contend that a principal amount of **Rs.14,55,63,931** remained outstanding and further claims interest at the rate of 24% per annum, contending that it is an MSME and is entitled to such interest under Section 16 of the MSME Act, 2006 and on the aforesaid basis, OC has quantified the total operational debt at **Rs.19,25,01,796.48** and states that the last invoice was dated **03.07.2024** and, in terms of the Agreement dated 24.04.2024, the amount covered by the said invoice fell due on **03.08.2024**, which has accordingly been stated as the date of default.

h. Despite receipt and acceptance of the goods by the CD and repeated reminders by the OC to the CD, payment remained outstanding due to which the OC was forced to issue a statutory Demand Notice dated **17.09.2025** under Section 8 of the Code, calling upon the CD to make payment of the outstanding amount but the CD did not issue any reply to the said Demand Notice disputing the debt or raising any objection concerning the supplies prior to filing of this Petition.

i. In view of the abovementioned reasons OC claims that an amount of Rs.14,55,63,931/- towards principal remains unpaid, apart from interest and security deposit, resulting in the total claim of Rs.19,25,01,796.48 and prays for admission of CD into CIRP.

3. The Respondent has filed the Statement of Objections on 30.03.2026 contending that:

a. **CD performs sovereign functions:** The CD submits that it has been carrying out functions of the Government of Karnataka since its incorporation on **07.09.1973** and is effectively an extension of the State Government. According to the CD, its functions include management of the Public Distribution System in Karnataka, collection and storage of food grains, wholesale distribution through depots, supply to Fair Price Shops, operation of retail outlets and implementation of various welfare schemes of the Central and State Governments. The CD has specifically

referred to its role in implementation of the **Mid-Day Meal Scheme, Anna Bhagya Scheme and Integrated Child Development Services**, besides procurement of essential commodities, procurement under Minimum Support Price, market intervention during seasons of scarcity and these activities are undertaken in public interest and are substantially dependent upon directions and funding of the Government. The food security of the State is also as important as security of the Nation and therefore it is a Sovereign function and the management of the Corporate Debtor can't be placed in the hands of Interim Resolution Professional/ Resolution Professional, which will affect the food security of millions of people in the State of Karnataka. Thus, the CD submits that it is an extended limb of the State Government and in view of the judgment of the Hon'ble Supreme Court in ***Hindustan Construction Company Ltd v. Union of India*** (***2020) 17 SCC 324,*** Corporate Debtor is performing sovereign functions and cannot effectively be subjected to CIRP since a Resolution Professional cannot take over sovereign functions of the State and the Corporate Debtor cannot be permitted to be liquidated where such functions are involved

b. **Objection of Cabinet of Karnataka Government in the meeting dated 10.09.2025 regarding awarding of tender of supply of 12 lakh jute gunny bags weighing 580 grams as per second Work Order dated 11.06.2024 issued by the CD as there was no Price Discovery:** Hon'ble Minister for Food, Civil Supplies and Consumer Affairs had sought approval of the Cabinet of Government of Karnataka for payment towards supply of Jute Gunny bags weighing 580 grams but based on deliberations of the cabinet, the Chief Secretary to the Government of Karnataka stated that tender of supply of 12 lakh jute gunny bags weighing 580 grams as per second Work Order dated 11.06.2024 won by the Petitioner is without any tender and there was no price discovery for the price to be fixed for the Jute bags weighing 580 grams each supplied

by the Petitioner. In the absence of tender, the price discovery for Jute bags weighing 580 grams each did not take place because the Agreement for supply of Jute Gunny Bags weighing 775 grams was pursuant to a valid tender in which the Petitioner was placed as L2 and on L1's inability to supply the quantity and quality required, the Petitioner being L2 was selected to supply Jute Gunny Bags weighing 775 grams each. The supply of Jute Gunny Bags weighing 580 grams each, however, were carried out without fully following the prescribed tender procedure and that non-payment by CD is not attributable to its inability or unwillingness to pay but is pending Government approval.

c. **Violation of Karnataka Transparency in Public Procurements Act, 1999 ("KTPP Act"):** Respondent submits that awarding of tender to the Petitioner for 12 lakh jute gunny bags weighing 580 grams was not in accordance with the statutory procurement procedure under Section 5 of the KTPP Act, which states that procurement of goods or services other than by way of tender is prohibited. Though Section 4 of the KTPP Act provides for exemption from the applicability of Section 5 of the KTPP Act, if a particular procurement of goods or services transaction falls in the exemptions listed in Section 4 but for that Cabinet of Government of Karnataka, will need to specifically provide exemption from the applicability of KTPP Act for a particular transaction, which is not available for the transaction of supply of Jute Gunny Bags weighing 580 grams each because the same was not accorded by the Cabinet of Government of Karnataka as per the minutes of proceedings dated 10.09.2025 of Cabinet read with observations dated 02-04-2026 made by Under Secretary to the Government on examination of transaction, pursuant to directions of Chief Secretary of Government. He has stated that there have been repeated violations of Cabinet decision and also KTPP Act

d. **Unlawful contract cannot attract provisions of the IBC.** It is submitted that any agreement or communication for procurement of goods or services in violation of Section 5 of the KTPP Act attracts the provisions of Section 23 of the Contract Act, 1872 which declares as unlawful any agreement which is prohibited by any law. Therefore, a contract which is forbidden by KTPP Act is unlawful under Section 23 of the Contract Act, 1872. Consequently, the Agreement dated 24-04-2024 executed by the parties, communications, work orders flowing out of the Agreement for procurement of Jute Gunny bags weighing 580 grams each, is unlawful and void ab initio as ***doctrine of illegality*** will be applicable. It is further submitted that the non-obstante provisions in Section 238 of the IBC does not override inconsistent parallel procedural laws, but does not convert a contract forbidden by law into a valid contract.

e. **Dispute regarding interest component and amount claimed by the Petitioner:** The CD disputes the liability of Rs.19,25,01,796.48 claimed by the OC because there is no agreement between the parties regarding payment of interest at the rate claimed by the OC, on delayed payment. The amount is inflated and incorrect. Even the amount payable towards the 580 gram gunny bags was approximately Rs.13,30,00,000 and the remaining components of the claim, particularly the interest component had not been contractually agreed.

f. **Corporate Debtor is a solvent Company:** It is submitted that the Respondent is a solvent company as demonstrated by the Provisional Financial Statements attached to the Reply and is 100% funded by the Government and the amount of Rs. 13,30,00,000 has not been paid to the Petitioner for the following reasons: **(i)** There are pre-existing disputes regarding the price of Jute Gunny bags weighing 580 grams each, as price discovery mechanism was not carried out in the absence of tender, **(ii)** There is no approval for the payment by the Cabinet of the Government

of Karnataka in view of the Agreement for procurement of Jute Gunny bags weighing 580 grams each being forbidden by the KTPP Act and consequently the agreement falling squarely under Section 23 of the Contract Act, 1872 rendering the Agreement unlawful and void ab initio.

g. Thus, based on abovementioned reasons the Respondent Prays that the objectives of IBC are not to institute money recovery proceedings and in light of above, this Authority may dismiss the Petition as not maintainable.

4. The Petitioner has filed rejoinder on 10.04.2026, contending as under:

a. **Operations of Corporate Debtor do not come within the ambit of "sovereign functions".** The 'Sovereign' function are functions which are inalienable to the State and can only be exercised by the State. The Hon'ble Supreme Court in ***Agricultural Produce Market Committee v. Ashok Harikuni & Anr., (2000) 8 SCC 61*** has held that the dichotomy between sovereign and non-sovereign functions can be found by finding which functions of the State can be undertaken by a private person or body and if the function can be undertaken by a private person, it does not come within the ambit of "sovereign function". In the instant case, functions relating to procurement of essential commodities, procurement under Minimum Support Price, market intervention during seasons of scarcity cannot come within ambit of sovereign function as another private individual can also carry out the said functions. Moreover, CD has misinterpreted the judgment passed by the Hon'ble Supreme Court in the case of ***Hindusthan Construction Company v. Union of India, in 2019 ibclaw.in 21 SC*** because therein the insolvency proceedings against NHAI was held to be not maintainable as it was the statutory body and not a corporate entity for highways set up under the NHAI Act, 1988 which cannot be taken over by a Resolution Professional. The CD, however is not an extended limb of the Government and does not perform any government function which cannot be taken over by the Resolution

Professional. In ***Hindusthan Construction Company***, the Hon'ble Supreme Court recognised that insolvency proceedings against Government company like the CD herein can be initiated by virtue of it being covered under the ambit of Section 3(7) of the Code because CD is not a statutory body like NHAI or Damodar Valley Corporation set up under the NHAI Act and DVC Act, 1948 respectively but. CD is a company incorporated under the provisions of the Companies Act, 1956 and can be admitted under CIRP.

b. **CD has admitted the debt of Rs. 13.30 Crores**: The Applicant submits that the CD has not disputed the invoices raised by the OC and also not denied the receipt of the goods and admitted that a sum of Rs. 13,30,00,000/- (Rupees Thirteen Crore Thirty Lakhs only) is payable by the OC to the CD but not paid due to issues in tender process and violation of the KTPP Act. That however, cannot be ground to not pay because dispute regarding violation of KTPP Act, an inter-se dispute between the CD and Government of Karnataka with which the OC is not concerned. The CD has admittedly consumed the goods supplied by the OC, without any objection. Even if the dispute regarding interest is kept aside, the principal amount admittedly outstanding, is substantially above the statutory threshold prescribed under Section 4 of the Code.

c. **IBC has overriding effect over KTPP Act and dispute regarding KTPP Act is an afterthought :** The CD's reliance solely upon Sections 5 and 6 of the KTPP Act is misplaced since the Act itself contains exceptions under Section 4, including procurement falling within the specified exceptions/notifications of the Government but non obtaining of approval under KTPP Act is an internal dispute between the CD and the Government of Karnataka but that cannot be a ground not to pay Petitioner as no dispute with respect to receipt or quality of goods has been raised with the Petitioner Further, the provisions of the IBC contain an overriding clause under Section 238 and where there is any

inconsistency between the provisions of the Code and any other law for the time being in force, the provisions of the Code shall prevail. Therefore, the CD cannot rely upon the KTPP Act as a ground to defeat the statutory consequences flowing from an established operational debt and default under the Code. It is submitted that the KTPP Act may regulate the manner in which the CD ought to undertake procurement, but such alleged procedural non-compliance cannot erase the fact that CD had issued the Work Orders; the OC supplied the goods; the CD received the goods; the goods were not rejected on account of quality or quantity; the CD utilised/consumed the goods; the payment remained outstanding; and the CD did not raise such dispute in response to the Section 8 Demand Notice.

d. In view of the abovementioned reasons, the Petitioner submits that the alleged KTPP violation cannot constitute a "pre-existing dispute" capable of defeating a Section 9 Petition. All contentions raised by the CD in its Statement of Objections are without basis and prays that this Authority admit the CD to the CIRP.

5. We have heard Ld. Senior Counsels for the parties and carefully perused the material on record.

6. To begin with, it needs to be clarified that there is no dispute between the parties regarding supply and payment of jute gunny bags other than the last supply of such bags of 580 gms.

7. It is glaring that there is no factual dispute between the parties in respect of the underlying transaction. The placing of order by the respondent, after successful execution of order of supply of similar material on being invited being L2 bidder, as L1 bidder had expressed inability, at the rates quoted by L1 bidder, supply of **12 lakh jute gunny bags weighing 580 grams** by the Operational Creditor, the receipt of such goods by the Corporate Debtor and the outstanding amount payable towards the supplies. The Corporate Debtor

has not disputed that the goods were supplied pursuant to the Agreement and Work Orders placed by it. It is also not disputing the fact that amount remains unpaid. **The Corporate Debtor has, in fact, categorically acknowledged an outstanding amount of Rs.13,30,00,000 as against the claimed principal amount even in their objections filed in this case albite** reaming amount claimed as interest is questioned. That however may not really be germane for us to delve into so far as the admitted principal amount crosses the prescribed threshold under Section 4 of the Code. The date of default being 3.08.2024 is also not much of a bone of contention between the parties and the fact remains that the petition has been filed within the period of limitation.

8. The controversy thus boils down to - whether CIRP can be initiated against the respondent, a government company claiming to perform sovereign functions and whether procurement from the petitioner was against the provisions of KTPP Act. We hereafter analyse these issues one by one.

9. The CD has contended that it is a Government Owned and Government Controlled entity entrusted with functions relating to procurement, storage and distribution of food grains and implementation of various welfare schemes which are closely connected with food security and public distribution and that the CD functions as an extended limb of the State and performs sovereign function therefore, CIRP cannot be initiated against it in the light of Judgement in ***Hindustan Construction Company v. Union of India, 2019 ibclaw.in 21 SC***

10. The OC has, on the other hand, submitted that the CD is a company incorporated under the Companies Act and therefore falls within the expression "corporate person" under Section 3(7) of the Code and Government ownership or the public character of its activities does not, by itself, confer immunity from the operation of the Code because it is not a statutory body like NHAI set up under the NHAI Act, 1988 which the Hon'ble Supreme Court in ***Hindustan Construction Company v. Union of India, 2019 ibclaw.in 21 SC*** has held could not be taken over by the Resolution

Professional. A corporate entity carrying on government functions which can be done by any private entity would not make it an extended limb of the Government as not to be taken over by the Resolution Professional.

11. In view of the contrary assertions, it becomes necessary to refer to the relevant observations in the quoted judgement in ***Hindustan Construction Company Ltd v. Union of India*** ***(2020) 17 SCC 324*** which are reproduced: -

> *16……So far as the NHAI is concerned, Shri Mehta referred to the Statement of Objects and Reasons of the National Highways Authority of India Act, 1988 (hereinafter referred to as "the NHAI Act") and some sections of the said Act to show that NHAI is a statutory body which functions as an extended limb of the Central Government, and which is to carry out the sovereign function of laying down national highways. Obviously, IBC cannot be used against such a statutory body, because no resolution professional or private individual can take over the management of such body, as it performs sovereign functions, nor can such body be driven to insolvency under an Insolvency Code. ….*
>
> *63.* ***From a conspectus of the above provisions, what is clear is that NHAI is a statutory body which functions as an extended limb of the Central Government, and performs governmental functions which obviously cannot be taken over by a resolution professional under the Insolvency Code, or by any other corporate body. Nor can such Authority ultimately be wound-up under the Insolvency Code****.*
>
> *[Emphasis Supplied]*

12. The judgement draws a clear distinction between statutory government bodies such as the National Highways Authority of India (NHAI), created by statute to perform sovereign functions, and government companies incorporated under the Companies Act. So far as the NHAI was concerned, citing the Statement of Objects and Reasons of the National Highways Authority of India Act, 1988 and few provisions thereof, it was held that NHAI is a statutory body that functions as an extended limb of the Central Government, and carries out the sovereign function of laying down national highways. The Code, therefore cannot be used against such a statutory body, because no Resolution Professional or private individual can take over the management of such body nor can it be driven to insolvency under the Code.

13. While statutory bodies may be immune from insolvency proceedings, the government-owned Corporate Persons, viz. NHPC, NTPC and IRCON are not *ipso-facto* protected and remain amenable to the Code by virtue of being

covered under the first part of 'corporate person' as provided in section 3(7) thereof.

14. We note that the Master Data of the Corporate Debtor, filed with the Petition, explicitly records the sub-category of the Corporate Debtor as "State Government Company" under the Companies Act. Section 2(20) of the Companies Act defines company as "***a company incorporated under this Act or under any previous company law***." While Section 2(45) of the Companies Act, 2013 defines Government company as "***any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.***" Therefore, a conjoint reading makes it clear that a Government Company is, first and foremost, a company incorporated under the Companies Act, and its status as a "Government Company" is merely a sub-category based on ownership of its shareholding and, Government Companies cannot be excluded from the purview of the Code. Because legislative scheme of the Code is of universal application to all companies incorporated under the Companies Act, unless specifically exempted and no such exemption is shown to exist for the Government Companies.

15. The core stated functions of CD are procurement and distribution of essential commodities, procurement under Minimum Support Price, market intervention during seasons of scarcity. All of these activities can very well be performed/undertaken by any private entity. No specific activity/ies specially being discharged by the Corporate Debtor to be discerned as an essential limb/entity of the State Govt., has been pointed out. Just because the Corporate Debtor is manned by Govt. appointed Officers, owing to majority shareholding, would not change its functional character. It has been held in ***Agricultural Produce Market Committee v. Ashok Harikuni & Anr., (2000) 8 SCC 61: -***

> *"So, sovereign function in the new sense may have very wide ramification but essentially sovereign functions are primary inalienable functions which only State could exercise. Thus, various functions of the State, may be ramifications of 'sovereignty' but they all cannot be construed as primary inalienable functions. Broadly it is taxation, eminent domain and police power which covers its field. It may cover its legislative functions, administration of law, eminent domain, maintenance of law and order, internal and external security, grant of pardon.* ***So, the dichotomy between sovereign and non-sovereign function could be found by finding which of the functions of the State could be undertaken by any private person or body. The one which could be undertaken cannot be sovereign function. In a given case even in subject on which the State has the monopoly may also be non-sovereign in nature. Mere dealing in subject of monopoly of the State would not make any such enterprise sovereign in nature****. …… .*

16. The other functions undertaken by Corporate Debtor relating to implementation of the **Mid-Day Meal Scheme, Anna Bhagya Scheme and Integrated Child Development Services**, besides afore-stated activities of procurement/distribution though in public interest with state having monopoly in it but cannot be considered to be 'sovereign' in nature as on being funded any private entity can carry out all these and alike functions.

17. It is pertinent to note that the main objects of CD mentioned in its Memorandum of Association is following:

> ***A. Main objects to be pursued by the Company on its incorporation.-***
> *To engage either on its own or as the agent of Government or any firm, company, corporation, or institution, in the production, purchase, processing, storage, transport, distribution and sale of foodgrains, foodstuffs and such other essential commodities as it may choose and to provide assistance, advice and services therefor, including capital, resources, technical, managerial and other services.*

The Corporate Debtor thus involved in multifarious activities primarily in relation to foodgrains, foodstuffs and similar other essential commodities not as an exclusive arm or even agent of government. It substantiates the fact that Corporate Debtor is neither undertaking any inalienable sovereign function nor has eminent domain in discharge thereof.

18. For above reasons, the Corporate Debtor cannot seek to stand out of the purview of Insolvency & Bankruptcy Code, 2016. It being a State Government Company incorporated under the Companies Act, 2013, squarely

falls within the definition of "corporate person" under Section 3(7) of the Code.

19. Coming to the other issue, the principal defence of Corporate Debtor is that the procurement of 580 grams jute gunny bags was not preceded by a valid tender in accordance with the Karnataka Transparency in Public Procurement Act and exemption, if any needs to be specifically provided by Government of Karnataka under Section 4 thereof, for a particular transaction, which in this case is not available. The payment therefore, is subject to approval of the competent Government authorities which has not been obtained in this case

20. The Supreme Court of India, in the landmark judgment of ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.***, has laid down legal principle that Adjudicating Authorities must apply rigorous scrutiny in examining whether a pre-existing dispute exists. The Court emphasized that mere assertions or patently feeble legal arguments unsupported by contemporaneous evidence cannot be treated as constituting a bona fide dispute.

21. We have thoughtfully considered the aforesaid contentions raised by the CD with regard to non-compliance of provisions of the KTPP Act and are of the considered view that the CD has failed to make out a case of non-compliance of KTPP Act. The CD has itself stated that section 4 of KTPP Act provides for exemption and the relevant portion is reproduced below:

22. **Section 4. Exceptions to applicability:-** The provisions of Chapter II shall not apply to Procurement of goods and services,-

> *c) Where the procuring entity having procured goods, services or technology from a supplier or contractor determines that additional supplies must be procured from the same supplier or contractor for reasons of standardization and compatibility with the existing goods, service or technology;*
> *g) in respect of specific procurements as may be notified by the Government from time to time.*

23. It is not in dispute that State government had given approval to CD to procure 12 lakh jute gunny bags weighing 580 grams vide Government Order No.:

FCS 52 RPR 2023 Bengaluru dated 10.06.2024. The argument on behalf of the Respondent that government approval for work order no. 2 was not taken, cannot be accepted in view of the available exemption under Section 4 (c) of KTPP Act and as government approval had been obtained vide Government Order No: FCS 52 RPR 2023 Bengaluru dated 10.06.2024 and vide letter No. anasa 52 RPR 20923 (E-A) dated 23.04.2024 by Secretary to Government, Food Civil Supplies & Consumer Affairs and Legal Metrology Department to the Managing Director of the Corporate Debtor for procurement of 10 lakh gunny bags of 775 grammes and 12 lakh gunny bags of 580 grammes. The Relevant para of the First order of Government of Karnataka No.anasa 52 RPR 20923 (E-A) Karnataka Government Secretariat Vikasa Soudha Bengaluru, dated 23.04.2024 is reproduced below

1. *For the procurement of Ragi the required gunny bags as approved from the Government of India BIS specification IS 18161 2023, purchase of 775 grammes weighing 10 lakh gunny bags.*
2. *During this year for the purchase of Maize too much of demand has come, and for filling the maize necessary bags as per the BIS specification IS 16186 2014, 580 grammes weighing 10 lakh gunny bags, and to take action to purchase not exceeding the last year fixed rate.*
3. ***In future, as per the necessity, purchase of necessary gunny bags will be done, upon submission of specific proposal.***

24. Thus, the abovementioned order dated 23.04.2024 had given conditional consent for future procurements of gunny bags.

25. Based thereon, a second work order was issued for supply of gunny bags on the same terms and specific consent of Govt. was obtained vide Order No: FCS 52 RPR 2023 Bengaluru dated 10.06.2024 which is reproduced below:-

Government Order No: FCS 52 RPR 2023
Bengaluru dated 10.06.2024

In the background of the details explained in the proposal, permission is hereby accorded and ordered to the Managing Director, Karnataka Food and Civil Supplies Corporation Limited, to procure new gunny bags as approved in the tender, including 8.00 lakh new gunny bags containing jute twine, weighing 775 grams as per BIS Specification IS 18161-2023 approved by the Central Government, for procurement of Ragi from farmers in the state during the Kharif and Rabi seasons of the year 2023-24. 12.00 lakh new gunny bags containing jute twine, weighing 580 grams as per BIS Specification IS 16186-2014, for procurement of Jowar, making a total of 20.00 lakh new gunny bags.

By order and in the name of the Governor of Karnataka,

(Signature) 10.6.24
(Hanumantharaju. A)
Under Secretary to Government (1 & 2),
Department of Food, Civil Supplies,

26. The continuation/consent order exactly fell within the set contours of initial order dated 23.04.2024, and covered specific proposal for ***purchase of necessary gunny bags thus*** also falls under Section 4 (c) and (g) of the **Exceptions to applicability** of the KTPP Act. As such the KTPP Act cannot be invoked as a mechanism to, obliterate the admitted operational debt of CD where the ingredients of Section 9 are otherwise satisfied.

27. It is also pertinent to note that the Corporate Debtor had itself approached the Petitioner, who was the L2 bidder in the initial tender, for the award of the contract. It was for the Corporate Debtor to ensure compliance with the applicable terms and conditions of the tender and the provisions of the KTPP Act while awarding the contract. Admittedly, no objection regarding any alleged irregularity in the tendering process or the award of the contract was raised by the Corporate Debtor against the Petitioner during the subsistence of the contract or at the time of making payments. In this regard, it is necessary to distinguish between a dispute concerning the legality or regularity of the tendering process and a dispute arising out of the contractual relationship between the parties. Any alleged non-compliance with the provisions of the KTPP Act or irregularity in the award of the tender may give rise to issues concerning the actions of the Corporate Debtor vis-à-vis the State Government; however, such allegations, in the absence of a demonstrable dispute concerning the Petitioner's contractual performance or its entitlement to the amounts claimed, cannot, by themselves, constitute a pre-existing dispute between the Corporate Debtor and the Petitioner for the purposes of Section 9 of the IBC.

28. If the Competent Authority is of the view that there has been non-compliance of the provisions of the KTPP Act, which we were given to understand, and intends to take disciplinary steps against the concerned officers/officials, the

same cannot be an excuse to deny/decline or even to delay the payment of due outstanding amount to the petitioner as also to question the invocation of statutory remedy under Section 9 of the Code.

29. In view of the foregoing, we are satisfied that Operational debt exists and that default in payment thereof by the Corporate Debtor has occurred. The amount of admitted debt and default being much above the prescribed threshold under Section 4 of the Code, the Petition having met all the essential ingredients, deserves to be admitted under Section 9 of the Insolvency and Bankruptcy Code, 2016.

30. Hence, **CP (IB) No. 306/BB/2025 is allowed and** the Corporate Debtor, **Karnataka Food and Civil Supplies Corporation Limited, is admitted to undergo the Corporate Insolvency Resolution Process** and moratorium in terms of Section 14 of the Code is declared imposing following prohibitions to be complied with by all concerned:

   a. The institution of suits or continuation of pending suits or proceedings against the CD 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 of by the CD 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 CD in respect of its property including any action under the Securitization 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 CD;

31. It is further directed that the supply of essential goods or services to the CD as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

32. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a CD.

33. The order of moratorium shall have effect from the date of this order till completion of the CIRP or until approval of the Resolution Plan under sub-section (1) of Section 31 or passing of an order for liquidation of CD under Section 33 by this Authority as the case may be.

34. From the List of Bengaluru based Insolvency Professionals provided by the Insolvency & Bankruptcy Board of India, **Sh Addanki Haresh,** IBBI/IPA-001/IP-P01064/2017-18/11757, Contact No: 9886034643, e-mail: addanki.haresh@gmail.com is hereby appointed as Interim Resolution Professional(IRP) of the CD to carry on the functions as contemplated under IBC and Rules/Regulations framed thereunder. The IRP shall file his written consent within two weeks from the date of receipt of this order. The IRP shall be entitled to fee as per the provisions of IBBI Regulations/Circulars/Directions issued in this behalf and strive to complete the process within prescribed timeline.

35. The Petitioner shall deposit a sum of **Rs.3,00,000/-** (Rupees Three Lakhs Only) with the IRP for meeting the initial expenses viz. issuance of public announcement and inviting claims. The said expenses shall be subject to ratification by the Committee of Creditors (CoC). The fee and other expenses of the IRP/RP shall thereafter be pragmatically determined by the CoC from time to time commensurate to work performance/undertaken keeping in view the provisions of the Code, 2016 and the relevant IBBI Regulations.

36. The IRP shall issue the public announcement in accordance with Section 15 of the Code and make all necessary compliances as contemplated under the Code, 2016 and the Regulations framed thereunder. **The RP shall issue individual notices to statutory authorities** and submit proof of service with his first progress report**.**

37. The Board of Directors of the Corporate Debtor stand displaced from their position and is obligated to co-operate with the IRP/RP in smooth conduct of normal functions of the Corporate Debtor as well as CIRP by handing over entire control, management and custody of physical/virtual books of accounts, financial statements, property documents, information including various login IDs, passwords, other assets of corporate debtor to the IRP/RP against receipt. The IRP shall keep the Corporate Debtor as a going concern and all Key Managerial Persons and officers/employees continue to discharge their duties and functions

38. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying its constitution to this Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee in accordance with the provisions of the Code and the applicable Regulations.

39. The Interim Resolution Professional is further directed to send **monthly progress reports** to this Authority The IRP shall perform all duties and exercise all powers conferred under Sections 17, 18, 20, 21 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016.

40. A copy of the order shall be communicated to both the parties. Learned Counsel for the Petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. **The Registry is also directed to forward a softcopy to the IRP and Registrar of Companies, Karnataka by e-mail for necessary action.**

-Sd/-	-Sd/-
RADHAKRISHNA SREEPADA **MEMBER (TECHNICAL)**	**SUNIL KUMAR AGGARWAL** **MEMBER (JUDICIAL)**