

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

KOCHI

IA(IBC)/285/KOB/2022

IN

CP(IB)/06/KOB/2022

(Under Section 65 of the Insolvency and Bankruptcy Code, 2016)

&

CP(IB)/06/KOB/2022

*(Under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4
Of Insolvency and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016*

IA(IBC)/285/KOB/2022

In the matter of:

Mangomeadows Agricultural Pleasure Land (P) Limited, Building No. XV/175 A,
Mangomeadows, Ayamkudy P.O., Kaduthuruthy, Kottayam, Kerala- 686 613.

...Applicant

-Versus-

Kosamattam Finance Limited, Kosamattam Mathew K. Cherian Buildings,
Market Junction, Kottayam, Kerala- 686 001.

...Respondent

-And-

CP(IB)/06/KOB/2022

In the matter of:

Kosamattam Finance Limited, Kosamattam Mathew K. Cherian Buildings,
Market Junction, Kottayam, Kerala- 686 001.

... Financial Creditor

-Versus-

Mangomeadows Agricultural Pleasure Land (P) Limited, Building No. XV/175 A,
Mangomeadows, Ayamkudy P.O., Kaduthuruthy, Kottayam, Kerala- 686 613.

... Corporate Debtor

Coram:

Shri. P. Mohan Raj : Member (Judicial)
Shri. Satya Ranjan Prasad : Member (Technical)

Parties/ Counsel present (through video conference):

IA(IBC)/285/KOB/2022:

For Applicant : Mr. Harikumar G. Nair,
Mr. Akhil Suresh,
Mrs. Anu Balakrishnan Nambiar,
Mr. Jomon K. Chacko, Advocates.
For Respondent : Mr. Dhananjaya Sud, Advocate.

CP(IB)/06/KOB/2022:

For Financial Creditor : Mr. Dhananjaya Sud, Advocate.
For Corporate Debtor : Mr. Harikumar G. Nair,
Mr. Akhil Suresh,
Mrs. Anu Balakrishnan Nambiar,
Mr. Jomon K. Chacko, Advocates.

Order reserved on: 23.11.2022

Order pronounced on:25.01.2023

ORDER

IA(IBC)/285/KOB/2022

The present application is filed by M/s. Mangomeadows Agricultural Pleasure Land (P) Limited, Respondent in CP(IB)/06/KOB/2022 under Section 65 of the Insolvency and Bankruptcy Code, 2016 seeking the following reliefs:

- i. Declaring that Company Petition No. CP(IB)/06/KOB/2022 has been initiated by the Financial Creditor fraudulently and with malicious intent

for purposes other than for the resolution of the insolvency of the Corporate Debtor.

- ii. To pass appropriate order levying penalty on the Financial Creditor as per Section 65 of the IBC, 2016.
 - iii. Dismiss CP(IB)/06/KOB/2022 filed by the Financial Creditor.
2. The facts as narrated in the application and explained by the Applicant are summarized hereunder:
- i. The Applicant had approached the Respondent for availing financial assistance in the year 2016 in connection with the establishment of a agricultural theme park. By letter dated 24.02.2016 the Respondent had sanctioned a loan of Rs. 8 Crores to the Applicant. The Respondent obtained signatures on the blank forms, blank papers, blank cheques and blank stamp papers from the Managing Director of the Applicant. As against the sanctioned loan of Rs. 8 crores, the Applicant was in immediate necessity of only Rs.4 crores. When the Applicant intimated the same to the Respondent, the Applicant was informed that since the total of Rs. 8 crores have been sanctioned, any fresh request for a lesser amount would need time for processing and approvals. Accordingly, the Respondent suggested that Rs. 7 crores can be availed and Rs. 4 crores be repaid into the loan account by the Applicant on the same day. The Applicant was also advised that such repayment would grant the Respondent substantial time to effect the balance amount through installments. Since there was no illegality or impropriety in availing the said Rs. 7 crores and repaying Rs. 4 crores on the same day, the loan amount of Rs.7 crores was availed by the Applicant Company which was transferred on 01.03.2016 into the Company Account with South Indian Bank, Kallara Branch. Kottayam. The Applicant on the same day (i.e.,01.03.2016) repaid a sum of Rs. 4 Crores to the Respondent by issuing a cheque to the Respondent for reducing the loan liability of the Applicant.

- ii. The Applicant has made repayments of substantial amounts to the Respondent, but the respondent has not credited these amounts in the loan account of the applicant Company. For the financial year ending 31.03.2016, the Applicant had repaid a total amount of Rs. 4,17,67,965/- but as per the statement produced by the Respondent only an amount of Rs. 11,08,333/- is recorded to have been repaid by the Applicant.
- iii. The funds of the Applicant Company have been diverted by the Respondent without the knowledge of the Applicant. Consequently, the outstanding amounts under the loan have been inflated by the Respondent to illegally extort huge amounts from the Company. Neither the payments effected by the company nor the dates of actual payment tally with the fabricated statement produced by the Respondent.
- iv. The income from the project was though gradually improving, not sufficient to pay the exorbitant rate of interests charged by the Respondent. Due to all the above reasons, the Applicant was not able to make repayment of the loan, as expected. By taking advantage of the situation the Respondent had charged an exorbitant rate of interest. penal interest and other charges, even contrary to the terms and conditions. The Respondent and its officials were pressurizing the Applicant for payment of more amounts. The Respondent thereupon demanded for its participation in the management of the project. Accordingly, the Applicant was constrained to permit the Respondent for management participation by appointing an accounts manager from the Respondent to look after, supervise and coordinate all accounts of the Applicant with full control over all its accounts on daily basis, at the cost of the Applicant company by paying a monthly salary not exceeding 30,000 and giving permission to the Respondent to draw 50% of the total collection, less the maintenance expenses of the theme park. Accordingly. an Accounts Manager was deputed to supervise the day-to-day affairs of the project. since 01.08.2018. The 50% of the collection from the park was taken over by the Respondent. A substantial amount was so collected and realized

by the Respondent from the income from the project. The Respondent has filed the present petition by suppressing all these material facts, by pleading incorrect facts and by the production of fake and fabricated account statements which do not reflect the repayments made by the Applicant.

CP(IB)/06/KOB/2022

3. Under consideration is Petition No. CP(IB)/06/KOB/2020 filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC, 2016) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The relief sought is to initiate Corporate Insolvency Resolution Process (hereinafter referred to as CIR Process") against the Corporate Debtor M/s. Mangomeadows Agricultural Pleasure Land (P) Limited. for the default amount of **Rs. 23,58,34,018/- (Rupees Twenty-Three Crore Fifty-Eight Lakh Thirty-Four Thousand and Eighteen only)** in respect of credit facility availed from the Financial Creditor.
4. The facts as narrated in the application and explained by the Financial Creditor are summarized hereunder:
 - i. The Directors of the Corporate Debtor approached the Financial Creditor for applying a Term Loan for the purpose of Investment in business aiming to invest in Mango-meadows and Multiplex at Neendoor. Pursuant to this, the Financial Creditor granted a Term Loan to the Directors of Rs. 2 Crore on 14.05.2015 and another loan of Rs.1 Crore on 31.07.2015 on the security of property with a residential building in Kallara Village and Multiplex property at Neendoor in Onamthuruthu Village both in the name of Mr. N. K. Kurian. The said loans are still outstanding and were classified as NPA, for which recovery proceedings under the SARFAESI Act are under process.

- ii. Again, on request of Mr. N K Kurian and Mrs. Lathika Kurian, (Directors of the Corporate Debtor) a loan of Rs.4.00 Crore, i.e., loan of Rs.1 Crore on 23.9.2015 and another Rs.3 Crore on 30.10.2015 was sanctioned to them on the collateral security of the property of Mangomeadows owned party by N K Kurian and party by Lathika Kurian. Subsequently, Mr. N K Kurian and Lathika Kurian changed the constitution of their business of Agricultural Theme Park into a Private Limited Company, incorporating on 02.12.2015 (hereinafter referred to as the Corporate Debtor) and thereby transferred all the said properties used for Mangomeadows already mortgaged to the Financial Creditor on 23.09.2015 while availing the loan for Rs. 4 Crore to the newly started company in the name of Mangomeadows Agricultural Pleasure Land (P) Limited.
- iii. The Corporate Debtor through its application dated 20.02.2016 approached the Financial Creditor to avail a credit facility of Rs. 10.50 Crores (Rupees Ten Crore Fifty Lakhs only) for their Agricultural Theme Park. The Financial Creditor vide its sanction letter dated 24.02.2016 and Agreement to Loan dated 01.03.2016, granted the credit facilities of Rs.8 Crore (Rupees Eight Crore only), for the same purpose on the security of the subject property which was already mortgaged in favour of the Financial Creditor. Further, the existing outstanding loan for the above total of Rs.4 Crore along with interest was closed from the proceeds of the present loan.
- iv. The Corporate Debtor agreed to repay the loan amount and interest at monthly rests in Monthly Interest Rs.12,66,667/- to be serviced for the first 12 months and 48 EMI of Rs.23,92,009/- to close the loan on or before 60 months. The Corporate Debtor again approached the Financial Creditor through its application dated 08.02.2017 for availing additional loan of Rs. 2 Crore (Rupees Two Crore only) for completing their Project. Consequently, the Financial Creditor vide its sanction letter dated

13.02.2017 and agreement to loan dated 16.02.2017 granted the additional loan of Rs.2 crore (Rupees Two Crore only) to the Corporate Debtor. Further, the existing loan of Rs.8 Crore availed on 01.03.2016 will be general security to the additional loan of Rs.2 Crore. The Corporate Debtor agreed for the monthly interest of Rs.3,16,667/- may be serviced annually on or before the completion of 12 months from the date of the loan and 48 EMI of Rs. 5,98,002/- to close the loan on or before completion of 60 months.

- v. The Financial Creditor stated that in both the credit loan facilities, it was agreed that the rate of interest applicable will be 19% per annum at monthly rests and a penal interest of 2% over and above the interest rate for the defaulted amount for the defaulted period. The Corporate Debtor stopped paying the re-payment installments, despite reminders and thereby defaulted payments. Consequent to this the account of the Corporate Debtor was classified as a Non-Performing Asset (NPA) on 31.12.2018. Subsequently, the Financial Creditor issued a Notice under Section 13(2) of SARFAESI Act, dated 29.01.2019 calling upon the Corporate Debtor to make the repayment of the default amount of Rs. 14,26,63,777/- (Rupees Fourteen Crore Twenty-Six Lakh Sixty-Three Thousand Seven Hundred and Seventy-Seven Only) as on 28.01.2019 to the Financial Creditor within a period of 60 days from the date of receipt of the said Notice. Pursuant to non-payment and the expiry of said notice the Financial Creditor took the symbolic possession of the Corporate Debtor on 17.04.2019 and issued another notice under Section 13(4) of SARFAESI Act.
- vi. The Corporate Debtor acknowledged its Financial Debt on 02.12.2020, in the Balance Sheet dated 31.03.2020, amounting to Rs.37,09,70,242.23/- as a long-term liability which includes the term loan availed from the Financial Creditor. The Corporate Debtor has made only some part payments which were too meagre compared to the committed repayment

obligations. The last payment received from the Corporate Debtor amounting to Rs. 9,99,976.40 (Rupees Nine lakh ninety-nine thousand nine hundred seventy-six and paise forty only) was on 18.07.2019. No further repayments have been received by the Financial Creditor.

- vii. The Financial Creditor further stated that the default of the Corporate Debtor was registered with the NeSL Information Utility on 23.11.2021.
5. On 10.03.2022 the Corporate Debtor filed a reply statement and stated that the loan amount of Rs.7 crores availed by M/s. Mangomeadows Company was transferred by the Financial Creditor on 01.03.2016 into the Company Account with the South Indian Bank, Kallara Branch, Kottayam. The Corporate Debtor on the same day (i.e.,01.03.2016) repaid a sum of Rs. 4 Crores to the Financial Creditor into the same account from which Rs. 7 crores were released to the Corporate Debtor. The said repayment of Rs. 4 Crores by the Company has not been reflected in the accounts maintained by the Financial Creditor.
6. It is stated that the Corporate Debtor had repaid a total amount of Rs.4,17,67,965/- (Rupees Four Crores Seventeen Lakhs Sixty-Seven Thousand Nine Hundred and Sixty-Five only) against the loan availed from the Financial Creditor. But the loan statement maintained by the Financial Creditor reflects only an amount of Rs. 11,08,333/- as repaid by the Corporate Debtor. It is further stated that the Financial Creditor has released an amount of Rs. 2 Crores on 16.02.2017 out of which a sum of Rs.1.25 Crores was repaid on the same day. However, the said repayment by the Corporate Debtor is also not seen reflected in the loan statement issued by the Financial Creditor.
7. It is further stated that without giving due credit to many of the repayments by the Corporate Debtor, the Financial Creditor has inflated the outstanding dues to more than 25 crores as on today. Despite repeated requests by the Corporate Debtor to the Financial Creditor to furnish a copy of the bank statement of South Indian Bank from which the amounts were released to M/s Mangomeadows and repayments made to the same account, the Financial Creditor has till date not issued a true bank statement, but has issued a manipulated table printed on

- their computer. The Financial Creditor is intentionally withholding the actual bank statement from the Corporate Debtor, since they are very well aware that they have siphoned off more than Rs 5 Crores repaid by the Company as early as in 2016.
8. It is stated that the repayments by the Company have been diverted by the Financial Creditor without the knowledge of the Corporate Debtor. Consequently, the outstanding amounts under the loan have been inflated by the Financial Creditor to illegally extort huge amounts from the Corporate Debtor. Neither the payments effected by the company nor the dates of actual payment tally with the loan statement issued by the Financial Creditor. It is settled law that fraud vitiates everything.
 9. On 13.10.2022 the Financial Creditor filed a rejoinder and stated that as per the request of the Corporate Debtor, the Financial Creditor, vide its Sanction Letter dated 24.02.2016 and Agreement to Loan dated 01.03.2016, granted the Credit Facility of Rs.8 Crore to the Corporate Debtor, for the security of the subject property which was already mortgaged in favour of the Financial Creditor by the directors of the Corporate Debtor. It is also stated that the existing outstanding Loan of Rs.4 Crore availed by the Corporate Debtor from the Financial Creditor was closed by the Financial Creditor from the proceeds of the aforesaid Credit Facility to the tune of Rs. 8 Crore availed by the Corporate Debtor from the Financial Creditor.
 10. It is stated that the Corporate Debtor, again, approached the Financial Creditor on 08.02.2017 for availing of an additional loan of Rs. 2 Crore for completing their Project Theme Park. Vide Sanction Letter dated 13.02.2017 and agreement to loan dated 16.02.2017 the Financial Creditor granted the additional loan to the Corporate Debtor.
 11. It is further stated that the Corporate Debtor has even acknowledged its liability qua the financial debt as of 02.12.2020 in its Balance Sheet dated 30.03.2020 amounting to 37,09,70,242.23/- (Rupees Thirty-Seven Crore Nine Lakh Seventy Thousand Two Hundred and Forty-Two and Twenty-Three Paise Only) under

the head Long-Term Liability, which includes the Term Loan availed by the Corporate Debtor from the Financial Creditor

FINDINGS

12. We have heard learned counsel for both parties at length and perused the entire case records/documents. In order to arrive at a decision in the matter, we have gone through the Balance Sheet of the Corporate Debtor. The amount of debt to the Financial Creditor is shown under the heading *Long-Term Liabilities*. We are of the opinion that the entries in books of accounts and/or balance sheets of a Corporate Debtor would amount to an acknowledgment of debt. Therefore, there is an acknowledgment of subsisting liability of the Corporate Debtor. It may not necessarily specify the exact nature of the liability, but it indicates the jural relation between the parties
13. From the records produced, we could find that there is a Creditor- Debtor relationship between the Financial Creditor and the Corporate Debtor, since the Corporate Debtor admitted that they received money from the Financial Creditor through various documents produced before this Tribunal and the Corporate Debtor has no case that they have fully repaid the money received from the Financial Creditor.
14. As there is a default in the payment of the financial debt, which has been confirmed by them in the counter affidavit that the Financial Creditor paid the money to the Corporate Debtor, this Tribunal is of the view that the present application filed by the Financial Creditor satisfies all the definitions of “Financial Creditor” “Default” and “Financial Debt” and qualifies for filing an application under the Insolvency and Bankruptcy Code. By mentioning various technical snags the Corporate Debtor cannot wash its hands in repaying the amount borrowed, which is a financial debt owed by them. Hence, there is a Creditor- Debtor relationship with them.
15. The Respondent/Corporate debtor in its counter describe much about Theme Park, and not disputed the loan availed. Further it is the case of the respondent

that amount of Rs. 11,00,000/- Paid in pursuance of DRT order is not but petitioner not given credit to the said payment. Petitioner side denies this and stated Respondent so far paid only a sum of Rs. 9,99,976.40/- and given credit to this amount. On the Respondent not furnished any document to prove the payment; despite the due amount as per petition is Rs. 23,58,34,018/- so even if the amount allegedly paid by the respondent is given credit the due amount is much more than the threshold amount. Further during the time argument Respondent admitted that debt amount payable by Respondent more than two crores, in fact on 11.11.2022 on the respondent side taken time to pay the admitted default, but not paid any amount. The Apex Court held in Radha Exports (India) Private Limited -vs- K.P Jayaram and another (2020) 10 SCC 538 at 550 Paragraphs runs as follows: -

32. The proposition of law which emerges from Innoventive Industries Ltd. is that the insolvency resolution process begins when a default takes place. In other words, once a debt or even part thereof becomes due and payable, the resolution process begins. Section 3 (11) defines "debt" as a liability or obligation in respect of a claim and the claim means a right to payment even if it is disputed. The code gets triggered the moment default is of Rs.1,00,000 or more. Once the adjudicating authority is satisfied that a default has occurred, the application must be admitted, unless it is otherwise incomplete and not in accordance with the rules. The judgment is however, not an authority for the proposition that a petition under Section 7 IBC has to be admitted, even if the claim is ex facie barred by limitation.

In the supra citation it is reiterated that even the part of the debt due amount payable covers the threshold amount the Insolvency Petition is to be admitted. In view this situation the defence taken by the respondent in its counter does not change the position.

16. The Corporate Debtor committed a default in repayment of the loan amount to the Financial Creditor, and hence its Loan Account was declared as NPA. In the light of the above facts and circumstances, the existence of debt and default is reasonably established by the Financial Creditor as a major constituent for admission of an application under Section 7(4) of the I&B Code. Hence, the contention of the Corporate Debtor in IA(IBC)/285/KOB/2022 and the reply statement filed in the Company Petition, we are of the considered opinion that the technical objection was raised through IA(IBC)/285/KOB/2022 only for the sake of objecting, which cannot be accepted. In view of what is stated above, we do not find any merit in **IA(IBC)/285/KOB/2022** which is **Dismissed** as devoid of merit.
17. Coming to CP(IB)/06/KOB/2022, we are of the considered view that the application filed in the capacity as a 'Financial Creditor' for a 'financial debt' which is recoverable from the Corporate Debtor viz., **M/s. Mangomeadows Agricultural Pleasure Land (P) Limited** is a fit case for admission and initiation of CIRP against the Corporate Debtor. The documents produced on record prove the disbursement of various loan facilities by the Financial Creditor to the Corporate Debtor and the failure to repay the loan.
18. The Application under Sub-Section (4) of Section 7 of I&B Code, 2016 is complete in all respects. Accordingly, the application for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor deserves to be admitted. Hence, the Application No. **CP(IB)/06/KOB/2021** is admitted and the following order has been passed: -
- a) Having admitted the Application, the provisions of the **moratorium** as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of the order shall be applicable by prohibiting the

institution of any suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc.

- b) The Financial Creditor has suggested the name of **Mr. Easwara Pillai Kesavan Nair**, an Insolvency Professional for appointment as an Interim Resolution Professional (IRP). The Financial Creditor has produced the required Form 2 and the consent of the Professional. Accordingly, this Tribunal appoints **Mr. Easwara Pillai Kesavan Nair** having Registration No. **IBBI/IPA-001/IP-P00445/2017-2018/10788**, residing at Vijayakumar & Easwaran Chartered Accountants, 6th Floor, Amrita Trade Towers, S.A Road, Pallimukku, Kochi, Kerala ,682016, **email id:- keaswaran@gmail.com** as the Interim Resolution Professional to carry out the functions as mentioned under IBC.
- c) The fee payable to IRP or as the case may be to RP shall comply with such regulation/circular and direction as may be issued by the IBBI and the IRP shall carry out his duties as contemplated by Section 15, 17, 18, 19, 20 and 21 of the IBC.
- d) The Financial Creditor shall deposit an amount of Rs. 2,00,000/- (Rs. Two Lakhs Only) with the IRP to meet the initial expenses towards issue of public notice and inviting claims etc. These expenses are subject to approval by the Committee of Creditors (CoC) and should not be treated as fee paid to the IRP.
- e) 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, by the Adjudicating Authority.
- f) 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 receipt of this order, as per the provisions of the Code.
- g) 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

C.I.R.P. and the compliance of the directions of this Order within 30 days to this Bench. Liberty is granted to intimate even at an early date, if need be.

- h) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order of Admission.
- i) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP in terms of Section 17 of the IBC. The Directors/Officers and Managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default coercive steps will follow.
- j) The Registry is directed to communicate this order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and e-mail within two days from the date of this Order.
- k) A copy of this Order be also sent to the Registrar of Companies, Kerala, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry of this Tribunal within seven days.
- l) The Resolution Professional shall submit his periodic reports before this Tribunal, as per the rules. List this matter for the first report of the IRP on 01.03.2023.
- m) File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.01.25 12:41:05 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN Digitally signed by PANDIAN
MOHAN RAJ
Date: 2023.01.25 13:01:09 +05'30'
RAJ

P. Mohan Raj
Member (Judicial)

Signed on this 25th day of January, 2023.

Rajasree