

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

IA (IBC) No. 337/KOB/2022

In

C.P (IB) No. 20/KOB/2021

In the Matter of:

Application under Section 33(1)(a) & 34 of the Insolvency and Bankruptcy Code, 2016 for an order of liquidation against the Corporate Debtor.

-And-

In the Matter of:

Shri. George Varkey, Resolution Professional of Periyar Agro Food Industries Pvt. Ltd, Building No. 110, Surabhi Nagar, Kakkanad, Kochi- 682030

... Applicant/Resolution Professional

-In-

In the Matter of:

ITC Ltd-Agri Business Division,

...Operational Creditor

-Versus-

Periyar Agro Food Industries Pvt. Ltd

...Corporate Debtor

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conference):

For the Applicant/RP : Mr. Hari Kumar G Nair, Adv
Mr. Akhil Suresh, Adv
Mr. Anu Balakrishnan Nair,
Adv.

**Order reserved on: 09.02.2023
Order pronounced on: 17.02.2023**

ORDER

1. The present Application has been filed by Shri George Varkey, Resolution Professional of Periyar Agro Food Industries Pvt. Ltd (hereinafter referred to as “Corporate Debtor”). The Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor under section 9 of IBC,2016 was admitted by this Adjudicating Authority on 21.12.2021 and Shri George Varkey was appointed as an Interim Resolution Professional. In pursuance of CIRP order the IRP effected public announcement in Newspapers in English in ‘Business Lime” and in Malayalam in ‘Mathrubhumi” Kochi Edition on 24.12.2021.
2. It is stated that in the 1st Committee of Creditors (CoC) meeting held on 21.01.2022, where the IRP had constituted the committee of creditors. Thereafter, it was in the 8th CoC meeting held on 28.04.2022, the applicant herein was confirmed as the Resolution Professional of the corporate debtor. The applicant had invited its First Expression of Interest on 22.03.2022 which was published in both Local and English Newspapers for which no Expression of Interest was received. Thereafter, for a second time, Expression of Interest was called for on 07.05.2022 and one prospective resolution applicant Mr. Shanavas Hassan, Proprietor of Goldwood Industries has submitted an expression of interest but no plan has been filed.
3. In the 10th CoC meeting held on 06.06.2022, and it was unanimously resolved that the period of CIRP to be extended by 90 days for completing the Resolution Plan process, i.e., upto 17.09.2022. In the said CoC meeting it was also unanimously resolved that Resolution Professional is to apply with Hon’ble NCLT for extending the CIRP period. Consequently, the applicant had filed an application in IA(IBC)/139/KOB/2022 under Section 12(2) of the IBC,2016 before this Tribunal. This Tribunal vide its order dated 28.06.2022 was pleased to extend CIR Process by allowing 30

days extension in CIR process taking note of the fact that EOI of a prospective resolution applicant is available for consideration of the CoC.

4. Consequently, the CoC on its meeting held on 30.6.2022 unanimously resolved that the period of (CIRP) to be extended by an additional 60 days for completing the Resolution Plan process, i.e., from 20.07.2022 to 17.09.2022 and this Tribunal vide its order dated 29.07.2022 in IA(IBC)153/KOB/2022 was pleased to allow application. The Applicant thereafter on 02.08.2022 issued a fresh FORM G for which the applicant had received on EOI from one Mr. G. Baburaj but however, he did not submit any Resolution Plan.
5. It is further stated that applicant had analysed the state of affairs of the corporate debtor and noted certain anomalies in the books of accounts of the company. When the same was pointed out to the CoC of the corporate debtor, it was decided that a forensic audit of the corporate debtor. Accordingly, in the 8th CoC meeting held on 27.04.2022, the CoC had appointed Mr. Vibin Vincent (hereinafter referred to as the "Forensic Auditor") to conduct a Forensic Audit of the corporate debtor. Consequently, the Forensic Auditor submitted his final report on 14.09.2022 which was further revised on 15.10.2022. Pursuant to the Forensic Audit report, the Applicant herein had filed an application before this Hon'ble Tribunal under Section 43 for Preferential Transactions, 45 for undervalued transactions and 66 for Fraudulent transactions. The said applications are pending adjudication before this Tribunal.
6. It is submitted that no Resolution Plan has been received by the Applicant and the Corporate debtor is not a going concern. There are no employees of the corporate debtor either. It is submitted that the matter was put up for discussion in the 15th CoC meeting held on 12.10.2022. It was noted that despite their best efforts, it was no longer possible to revive the corporate debtor. Hence, it was resolved by the CoC with 94.43% voting to proceed for liquidation of the Corporate Debtor under Section 33 of the IBC.

7. It is further submitted that the CoC has also resolved to appoint Mr. K. Easwara Pillai as the Liquidator of the Corporate Debtor. The said Mr. K. Easwara Pillai has also consented to act as the Liquidator of the Corporate Debtor and given his consent in writing.
8. This application is filed for liquidation with 94.43% voting of CoC members; further no resolution plan was received, and the corporate debtor is not a going concern. In this Circumstance, accepting the commercial wisdom of CoC and considering other attended circumstances the application is allowed.
9. In the result, the **Periyar Agro Food Industries Pvt. Ltd**, Corporate Debtor is **ordered to be liquidated**.
1. The applicant **Mr. K Easwara Pillai**, Resolution Professional of Corporate Debtor, **Periyar Agro Food Industries Pvt. Ltd**, having his office at – Amira Trade Towers, 6th Floor, S A Road, Pallimukku , Kochi- 682 016 has given a written consent to appoint him as a Liquidator as required under Section 31 A of IBC, 2016. Hence, Mr. K Easwara Pillai, with Registration No: IBBI/IPA-001/IP-00448/2017-2018/10791 and **Email Id:** keaswaran@gmail.com is appointed as liquidator of Corporate Debtor **Periyar Agro Food Industries Pvt. Ltd**,
2. The Liquidator is directed to forthwith take into his custody all the assets, Properties, and actionable claims of the corporate debtor and take necessary steps to ensure preservation, protection security and maintenance of those properties as provided under section 35(1)(b) & (d) of IBC 2016.
3. The Liquidator is directed to adhere to Section 33(1) (ii) & (iii) and discharge his powers and duties as specified under Section 35 to 41 of IBC, 2016 and meticulously adhere to the Rules and Regulations issued by IBBI in this regard from time to time.

4. Public Notice as contemplated under section 33(1) of the Code shall be issued in one morning, English daily and in one morning regional language newspapers.
5. All the powers of the Board of Directors of the Corporate Debtor and of its key managerial personnel, shall cease to exist in accordance with Section 34 (2) of the Code. These powers shall henceforth vest in the Liquidator. The personnel of the Corporate Debtor shall extend all assistance and cooperation to the Liquidator as may be required by him in the Liquidation process of the Corporate Debtor.
6. On initiation of the Liquidation process but subject to section 52 of the Code, no suit or other legal proceeding shall be instituted by or against the Corporate Debtor, save and except the liberty to the liquidator to institute a suit or other legal proceeding on behalf of the Corporate Debtor with prior approval of this Adjudicating Authority, as provided in section 33(5) of the Code read with its proviso.
7. In accordance with section 33(7) of the Code, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the Corporate Debtor, except to the extent of the business of the Corporate Debtor continued during the liquidation process by the liquidator.
8. In terms of Section 33(1) (b) (iii), the Liquidator shall file a copy of this Order with the Registrar of Companies, Kerala, within whose jurisdiction the Corporate Debtor is registered.
9. The fee of Liquidator to be determined as provided under Regulation 4 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation 2016.

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10. As per Regulation 13 of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulation, 2016, the liquidator shall submit a preliminary report to the Adjudicating Authority within 75 days from the liquidation commencement date providing various details/information as mentioned in the said regulation.
11. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps,
12. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Satya Ranjan Prasad
Member (Technical)

P. Mohan Raj
Member (Judicial)

Signed on this 17th day of February, 2022.

Supriya_P.S