IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT– I) CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **18.03.2024** THROUGH VIDEO CONFERENCING

PRESENT: **HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)**
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER	**:**
PETITION NUMBER	**:** CP(IB)/189(CHE)/2023
NAME OF THE PETITIONER(S)	**:** Axis Trustee Services Ltd
NAME OF THE RESPONDENTS	**:** GFM Retail Pvt Ltd
UNDER SECTION	**:** Sec 7 Rule 4 of IBC, 2016

ORDER

Present: Ld. Counsel Shri. Thriuyambak J Kannan for the Petitioner.

Ld. Counsel Shri. R Om Prakash for the Respondent.

Reply / Counter filed.

Ld. Counsel for the Respondent submits that settlement is not possible.

Heard Ld. Counsel for the parties and perused the record.

Vide separate order dictated and announced in open court, the Corporate Debtor has been admitted to CIRP and Shri. Hitesh Narayanbhai Agarwal has been appointed as IRP to carry out the CIRP proceedings.

Sd/- **Sd/-**

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

(SANJIV JAIN)
MEMBER (JUDICIAL)

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IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

CP(IB)/189(CHE)/2023

(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. GFM Retail Private Limited***

Axis Trustee Services Limited
2nd Floor, 25 Pusa Road,
Karol Bagh,
New Delhi - 110005

… Applicant

-Vs-

GFM Retail Private LImited
No. 2, 4th Cross, 1st Main Road,
S. V. S Nagar, Valsarvakkam,
Chennai – 600 087

… Respondent

Order delivered on 18th March, 2024

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : Thriuyambak J Kannan, Advocate
For Respondent: R. Om Prakash, Advocate

O R D E R

(Heard through VC)

This petition under Section 7 of Insolvency and Bankruptcy Code 2016 (IBC) has been filed by the Petitioner i.e. Axis Trustee Services Limited against the Respondent i.e. GFM Retail Pvt Ltd for initiating Corporate Insolvency Resolution Process (CIRP).

2. Part I of the application sets out the details of the financial creditor i.e. Stride India Ventures Debt Fund I and Stride Ventures Debt Fund II being represented by Axis Trustee Services Limited acting as a Debenture Trustee for the financial creditors under the Debenture Trust Deeds each dated 04.12.2021 and 19.02.2022 and amendment thereto dated 09.06.2023 (collectively Debenture Trust Deeds) with date of their incorporation as 31.07.2019 and 25.06.2021 respectively and the Petitioner incorporated on 16.05.2008. The registered office of both the financial creditors is at New Delhi while the registered office of the Petitioner is at Mumbai.

3. Part II of the application sets out the details of the Corporate Debtor. It was incorporated on 06.10.2015 and its registered office is at SVS Nagar, Valsarvakkam, Chennai- 600 087 within the jurisdiction of this Tribunal.

4. As per the averments made in the petition, the Corporate Debtor a company incorporated in 2015 engaged in the business of selling meat / meat products had issued debentures aggregating to a sum of Rs. 43.0 Crores under two debenture trust deeds dated 04.12.2021 issuing debentures for the value of INR 30,00,00,000/- and amendment thereto dated 09.06.2023 issuing further debentures for the value of INR 3,00,00,000 and Debenture Trust Deed dated

19.02.2022 issuing debentures for the value of INR 10,00,00,000/- (as Annexure A9 collectively) in favour of the financial creditor i.e. Axis Trustee Services Ltd.

5. The Petitioner was appointed as a Debenture Trustee in respect of the debentures under Debenture Trustee appointment agreements dated 04.12.2021 and 19.02.2022 as Annexure A10 collectively. Debentures were secured by way of charge over a certain assets of the Corporate Debtor namely Deeds of hypothecation dated 04.12.2021 and 19.02.2022 and Powers of attorney dated 14.12.2021 and 19.02.2022 respectively as Annexure A11 collectively.

6. It is alleged that the Corporate Debtor defaulted in its obligations, outlined under the Debenture Trust deeds which led the financial creditor issue a default notice on 28.07.2023. The amount in default was claimed as Rs. 2,76,86,024/- and 11,29,26,803/- respectively as on 31.10.2023 totalling to Rs. 14,06,12,827/-.

7. It is alleged that the Corporate Debtor expressed its inability to pay the outstanding amounts in relation to the debentures within seven days of receiving the Acceleration cum EOD Redemption Notice and accordingly

Asset Transfer Agreement dated 24.08.2023 was executed amongst inter alia the Debenture Trustee, Corporate Debtor and a company identified by the financial creditor as a purchaser of the assets. The Debenture Trustee accordingly received a sum of Rs. 25,37,00,000/- as enforcement proceeds resulting from the enforcement of the Deed of Hypothecation which amount was utilized by the Debenture Trustee towards the partial repayment of overall outstanding amounts owed by the Corporate Debtor concerning the Debentures leaving outstanding amount of Rs. 14,05,78,332/-.

8. It is stated that the Corporate Debtor has acknowledged that on 18.09.2023, pursuant to the reservation of rights, a letter was issued by the Petitioner calling upon the Corporate Debtor to fulfill the outstanding amounts as on 08.09.2023. The Petitioner has also filed record of default dated 20.10.2023 issued by the Information Utility NeSL stating the amount as Rs. 11,24,69,756 as Annexure A17 collectively. The Petitioner has also filed the latest financial statements.

9. In part IV of the petition, the Petitioner has claimed the amount in default as Rs. 14,06,12,827 and date of default as 28.02.2023.

10. In the Reply statement given by the Corporate Debtor, the Corporate Debtor has admitted to have signed / executed the above documents and submitted that the Corporate Debtor has been facing severe financial difficulties and has defaulted on its payment obligations under the Debenture Trust Deeds. It also accepted the receivable notice and stated that since it failed to make the payments, in terms of the Debenture Trust Deeds, the Debenture Trust Deeds enforced the security created over the Assets.

11. The Corporate Debtor has also admitted to have executed the agreement dated 24.08.2023 to transfer all the assets including IP and accepted its liability to pay Rs. 14,05,78,332/-. It is stated that its business was severely affected due to Covid 19 pandemic.

12. In the present case, the debt in default is more than Rs. 1.0 Crore i.e. 14,05,78,332. The date of default is 28.02.2023. This petition has been filed on 07.11.2023 i.e. within the limitation of 3 years from the date the debt became due. The Corporate Debtor did not dispute the debt amount nor its liability to repay the debt. We are of the view that the petition meets all the ingredients as contemplated under Section 7 of IBC. The Petition is accordingly admitted

and it is directed that the CIRP be initiated against the Corporate Debtor GFM Retail Private Limed.

13. In the instant case, The Financial Creditor has proposed the name of **Mr. Hitesh Narayanbhai Agarwal** with ***Registration Number:*** IBBI/IPA-001/IP-P01183/2019-20/12639, (email- ***caagrawalhitesh@gmail.com***) as the Interim Resolution Professional (IRP) who has also filed consent in Form – 2 and also upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 03.08.2024. We therefore appoint **Mr. Hitesh Narayanbhai Agarwal** as the IRP**.** The proposed IRP who is appointed shall take forward the process of Corporate Insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

14. As a consequence of the Application being **admitted** in terms of Section 7(5) of the Code, the moratorium as envisaged under the provisions of Section

14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

15. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

> (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
>
> (2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.
>
> (3) The provisions of sub-section (1) shall not apply to
>
> (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
>
> (b) a surety in a contract of guarantee to a corporate debtor.

16. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

> (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

17. Based on the above terms, the Application stands **admitted** in terms of Section 7(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Financial Creditor as well as to the Corporate Debtor by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

Sd/-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-

SANJIV JAIN
MEMBER (JUDICIAL)