

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

IBA/910/2019

Under Section 7 r/w Rule 4 of the IBC, 2016

In the matter of M/s. Tirupur Sri Senthil Cotton Mills Limited

Mr. Ce. K Thurraiswami

---Financial Creditor

V/s

M/s. Tirupur Sri Senthil Cotton Mills Limited

---Corporate Debtor

Order delivered on: 25.09.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor : *Shri. S. Sathiyamarayanan, Advocate*

For the Corporate Debtor : *Shri. S. Sankaranaryanan, Advocate*

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Heard and dictated in Open Court on: 25.09.2019

It is an Insolvency and Bankruptcy Application filed u/s 7 of the Insolvency & Bankruptcy Code, 2016 ("the Code") by the Financial Creditor namely Mr. Ce. K. Thurraiswami for initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor namely, M/s. Tirupur Sri Senthil Cotton Mills Limited on the

ground the Corporate Debtor defaulted in repaying Principal amount of ₹10,00,000 together with interest of ₹6,37,809, aggregating to ₹16,37,809/- as on 31.12.2018.

2. Looking at the Company Application, it appears that this Applicant/Financial Creditor, when this Corporate Debtor was in distress, lent the principal amount of ₹10,00,000 to this Corporate Debtor through a third person namely, Mr. Sasivarnan, to which, he executed a Demand Promissory Note for the same principal amount of ₹10,00,000 on 18.01.2012. Subsequent thereto, Mr. Sasivarnan, this Applicant/Financial Creditor and the Corporate Debtor on 18.01.2013 entered into a **Tripartite Agreement of Novation** agreeing that as to the amount of ₹10,00,000 disbursed to Mr. Sasivarnan by this Financial Creditor for repayment of loan borrowed the Corporate Debtor from Kotak Mahindra Bank, this Corporate Debtor acknowledged the said loan and undertook to directly repay the amount of ₹10,00,000 along with interest at @15% per annum to the Applicant/Financial Creditor at quarterly intervals within the maximum time limit for repaying the entire loan amount on or

before 31.12.2018 subject to the occurrence of the events of the default.

3. In addition to this Tripartite Agreement of Novation dated 18.01.2013, this Financial Creditor has filed a document dated 31.08.2016 from the Corporate Debtor confirming the balance and acknowledging the debt payable to the Financial Creditor. This Applicant/Financial Creditor has also filed another document dated 30.03.2017 reflecting OTS acceptance confirmation. In addition to those documents, the Financial Creditor has also filed financial statements of the Corporate Debtor for the Financial Year 2017-18 reflecting this liability against the corporate debtor. Besides this, the Corporate Debtor wrote a letter on 28.01.2019, seeking apology for not paying the loan on 31.12.2018 as per the agreement entered between them, therefore requesting time to repay the same in a couple of months. Since the repayment has not come to the Financial Creditor until before filing this case, in the month of July 2019, this Financial Creditor has filed this insolvency proceedings for initiation of CIRP against the Corporate Debtor. For the sake of completeness,

this Financial Creditor has also filed written communication given by the proposed Interim Resolution Professional, namely, Mr. Kanakkampalayam Chinnasamy Senthil Kumar expressing his consent to be appointed as IRP in this case.

4. As against this claim, the Corporate Debtor Counsel has admitted this debt as payable to the Financial Creditor leaving it open to this Bench to decide this matter in accordance with law.

5. On having seen the loan disbursement and documents supporting agreement between the parties conferring obligation upon the Corporate Debtor to repay ₹10,00,000 paid by the Financial Creditor towards the loan payable by the Corporate Debtor to Kotak Mahindra Bank in the year 2012 and also further correspondence reflecting the Financial Creditor demanding repayment and the Corporate Debtor failing to adhere to the promise of repayment of the loan amount on or before 31.12.2018, we are of the considered view that this Financial Creditor has proved existence of debt and default, whereby looking at the consent given by the Insolvency Professional, we hereby admit this case by appointing Mr.

Kanakkampalayam Chinnasamy Senthil Kumar as IRP with directions as follows:

- I. That Moratorium is hereby declared prohibiting all of the following actions, namely,
 - a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor 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 corporate debtor 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 corporate debtor 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 corporate debtor.
- II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - IV. That the order of moratorium shall have effect from 25.09.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.
 - V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.
 - VI. That this Bench hereby appoints Mr. Kanakkampalayam Chinnasamy Senthil Kumar, having Registration Number [IBBI/IPA-001/IP-P01229/2018-19/12091], 27, 4th Street, Ramaiah Colony West, Ram Nagar, Tirupur-641602, E-Mail: kcsenthilkumarip@gmail.com, Mobile No: 9444785500 as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.
6. Accordingly, this Petition is **admitted**.

7. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email.

-Sd-
(S. VIJAYARAGHAVAN)
Member (Technical)

-Sd-
(B. S.V. PRAKASH KUMAR)
Member (Judicial)

TJS/VS