

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
CHENNAI BENCH – II, CHENNAI**

CP(IB)/178(CHE)/2022

*(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **M/s. EMI INFRASTRUCTURE PRIVATE LIMITED***

M/s. SHRIRAM TRANSPORT FINANCE COMPANY LIMITED

Rep by its Power of Attorney,

Regd Office:

14A, South Phase, Indus

trial Estate,

Guindy, Chennai – 600 032.

... Applicant / Financial Creditor

-Vs-

M/s. EMI INFRASTRUCTURE PRIVATE LIMITED

[CIN: U45208TN2008PTC066054]

Regd Office:

T1, Cindhta Enclave 144, Bharatha Matha Street,

East Tambaram, Chennai – 600 032

Also at:

Flat No. S2, 2nd Floor, 'LA CLIFF'

Plot No. 11, V.O.C. Street,

Rajakilpakkam, Chennai – 600 073.

...Respondent / Corporate Debtor

Order Pronounced on 01st February, 2023

CORAM:

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor : Ramalingam & Associates, Advocates

For Corporate Debtor: Bratheesh, Advocate

ORDER

This Application has been filed by **M/s. SHRIRAM TRANSPORT
FINANCE COMPANY LIMITED** (hereinafter referred to as 'Financial
Creditor') on 15.07.2022 under Section 7 of the Insolvency and

Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **M/s. EMI INFRASTRUCTURE PRIVATE LIMITED** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part - I of the Application, it is seen that the Applicant is the Financial Creditor. The registered office address as per the Application is stated to be situated at 14A, South Phase, Industrial Estate, Guindy, Chennai - 600 032. Further, Part-I lays down the one Mr. Sakthivel, who is the Senior Executive of the Applicant Financial Creditor is authorised by way of a 'Special Power of Attorney' dated 07.09.2021, the same is placed on record. Verifying Affidavit dated 30.06.2022 was filed for the same.

3. Part - II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private limited company incorporated under the Companies Act, 1956 on 14.01.2008 with CIN: U45208TN2008PTC066054. The registered office of the Corporate Debtor as per the MCA master data is situated at Flat No. S2, 2nd Floor, 'LA CLIFF' Plot No. 11, V.O.C. Street, Rajakilpakkam, Chennai - 600 073. The Authorised

Share Capital of the Corporate Debtor and Paid-up Share Capital is stated to be Rs.12,00,00,000/-.

4. From Part - III of the Application, it is seen that the Financial Creditor has proposed the name of the Interim Resolution Professional (IRP) viz., Mr. Mathur Sabhapathy Viswanathan, Reg. No. IBBI/IPA-001/IP-P00674/2017-2018/11148.

5. From Part - IV of the Application, it can be seen that the Financial Creditor has claimed a total debt amount of Rs.6,62,41,657.08/- (Rupees Six Crores Sixty-Two Lakhs Forty-One Thousand Six Hundred Fifty-Seven and Eight Paise only) which is due and payable by the Corporate Debtor as on the date of filing the present. Since the present case is that of a 'Financial Debt', the date of classifying the individual loan account(s) as a 'Non Performing Asset' is construed as the date of default. The date of default / NPA are as below:

Loan No	Veh ID	Date of Agreement	Date of Non Performing Asset
SHOLIT805080002	KA51AB5231	09.05.2018	11-12-2019
SHOLIT805090001	KA51AB5233	09.05.2018	11-12-2019
SHOLIT805090002	KA51AB5234	09.05.2018	12-12-2019
SHOLIT805090003	KA51AB6040	09.05.2018	29-05-2020
SHOLIT805090004	KA51AB6041	09.05.2018	14-05-2020
SHOLIT902160001	KA591549	18.02.2019	25-11-2019
SHOLIT902160002	KA591554	18.02.2019	14-05-2020
SHOLIT902160003	KA591547	18.02.2019	14-05-2020
SHOLIT902160004	KA591553	18.02.2019	14-05-2020
SHOLIT902160005	KA591546	18.02.2019	14-05-2020
SHOLIT902160006	KA591598	18.02.2019	15-05-2020
SHOLIT902160007	KA591601	18.02.2019	20-01-2020

6. Part - V of the application describes the particulars of Financial Debt and the documents filed along the present Application for substantiating default.

7. It is stated that the Corporate Debtor had approached the Financial Creditor for the purchase of vehicles by way of submitting twelve individual loan applications. After execution of individual 'Hypothecation Cum Loan Agreement' and obtaining 'Demand Promissory Notes' against the twelve vehicles being purchased, the Financial Creditor sanctioned the loan application and disbursed as under:

S. No	Date of Disbursement	Sanctioned amount (In Rs.)	Tenure/EMI	Rate of Interest
1.	09.05.2018	35,58,000/-	57	11% p.a.
2.	09.05.2018	35,58,000/-	57	11% p.a.
3.	09.05.2018	35,58,000/-	57	11% p.a.
4.	09.05.2018	35,58,000/-	57	11% p.a.
5.	09.05.2018	35,58,000/-	57	11% p.a.
6.	18.02.2019	37,00,000/-	57	12% p.a.
7.	18.02.2019	37,00,000/-	57	12% p.a.
8.	18.02.2019	37,00,000/-	57	12% p.a.
9.	18.02.2019	37,00,000/-	57	12% p.a.
10.	18.02.2019	37,00,000/-	57	12% p.a.
11.	18.02.2019	37,00,000/-	57	12% p.a.
12.	18.02.2019	37,00,000/-	57	12% p.a.

8. It is stated that after availing the above financial assistance, the Corporate Debtor did not come forward to repay the same as agreed upon by way of 'Equated Monthly Installments', and as a result, the twelve individual loan accounts were classified as 'Non Performing Asset' between the period 25.11.2019 and 29.05.2020

by the Financial Creditor. The Financial Creditor submits that a total amount of Rs.6,62,41,657.08/- (Rupees Six Crores Sixty-Two Lakhs Forty-One Thousand Six Hundred Fifty-Seven and Eight Paise only) is the debt in default which is due and payable by the Corporate Debtor. The Financial Creditor has placed the certified Statement of Accounts along with the Application and the summary of the same is tabulated as below:

Veh ID	Date of default	Days of default	Date of Non Performing Asset	Settlement Amount
KA51AB5231	12.09.2019	988	11.12.2019	5795629.73
KA51AB5233	12.09.2019	988	11.12.2019	5797120.73
KA51AB5234	13.09.2019	987	12.12.2019	5789977.18
KA51AB6040	29.02.2020	818	29.05.2020	5203702.7
KA51AB6041	14.02.2020	833	14.05.2020	4308291.03
KA591549	27.08.2019	1004	25.11.2019	5877508.12
KA591554	14.02.2020	833	14.05.2020	5767878.99
KA591547	14.02.2020	833	14.05.2020	5767647.96
KA591553	14.02.2020	833	14.05.2020	5767647.96
KA591546	14.02.2020	833	14.05.2020	5361544.2
KA591598	15.02.2020	832	15.05.2020	5361509.12
KA591601	22.10.2019	948	20.01.2020	5443199.36
TOTAL				66241657.08

9. The Corporate debtor filed reply dated 01.12.2022 on 19.12.2022 before this Tribunal. It is stated by the Corporate Debtor that between September, 2021 and February, 2022, the Financial Creditor seized eleven out of the twelve vehicles which

were hypothecated in favour of the Financial Creditor, per contra, during the hearing of the matter on 12.01.2023, learned counsel for the Applicant on instructions submitted that no vehicles were seized. It is also stated that the Financial Creditor has invoked arbitration with respect to one vehicle (KA 51 AB 5231) and that the said proceeding is pending before the Arbitration Tribunal in C.M.A. No. 1257 of 2021.

10. In light of the above actions taken by the Financial Creditor under the 'Hypothecation and Loan Agreement', the Corporate Debtor states that the present Application cannot be maintained. It is contended by the Corporate Debtor that the Financial Creditor having seized eleven hypothecated vehicles cannot claim the entire sum of Rs.6,62,41,657.08/- and with respect to the arbitration proceeding for remaining one vehicle, it is contended that preferring this Application would amount to '*Res subjudice*'.

11. Heard the submissions and perused the pleadings and documents on record. The Corporate Debtor has not denied that the loans were disbursed to it. The subsistence of default is also not disputed. The contention of the Corporate Debtor with respect to the maintainability of the present Application cannot be sustained since the exercise of a contractual right cannot bar the Financial Creditor to invoke Section 7 of the Code. Further, the present Application being filed on 15.07.2022 before this Tribunal

is not hit by limitation since the date of default, i.e. the date of classifying the 1st loan account of the Corporate Debtor as 'Non Performing Asset' was only on 25.11.2019.

12. Having considered the representation by the parties, we are satisfied that this is a case of an admitted debt and considering that the Application is filed within the period of limitation, the Financial Creditor has made out a *prima facie* case proving debt and default warranting intervention of this Tribunal.

13. As a consequence of above discussion in light of facts of the present case, the Application is admitted in terms of Section 7 of the Code, moratorium as envisaged under 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;

14. However during the pendency of moratorium period in terms of Section 14(2) 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

B/11

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.

15. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (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.

16. The Financial Creditor has proposed the name of **Mr. Mathur Sabhapathy Viswanathan, (Email ID: msv8200@gmail.com), Reg. No. [IBBI/IPA-001/IP-P00674/2017-2018/11148]** as the Interim Resolution Professional (IRP) who, has also filed their

consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said insolvency professional hold valid Authorization for Assignment till 23.12.2023.

17. **Mr. Mathur Sabhapathy Viswanathan** is appointed as the IRP who is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Applicant / Financial Creditor is directed to remit a sum of Rs.2,00,000/- (Rupees Two Lakh only) to and in favour of the IRP for meeting out the initial expenses in relation to the CIR Process of the Corporate Debtor. The said amount shall be adjusted and ratified on account of the Financial Creditor.

18. 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 IBC, 2016. 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.

19. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions.

20. 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 above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records and also to take necessary steps for updating in the Masterdata reflecting the status of the Corporate Debtor, Copy of this order is to be sent to the Interim Resolution Professional above named who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

- Sd -

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

V.Shreekumar