

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH - I
CHENNAI

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ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 12.02.2020

PRESENT: SHRI R VARADHARAJAN, MEMBER-JUDICIAL
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP/158/IB/2018
NAME OF THE PETITIONER(S) : SHRIRAM CITY UNION FINANCE LTD
NAME OF THE RESPONDENT(S) : SPRING FIELD SHELTERS PVT LTD
UNDER SECTION : SEC 7 RULE 4 OF IBC

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION BY WHOM	

1.) M. SRIDEVI
For Sri A Shanker
Associates

Counsel for
Financial creditor/
petitioner

M. L. S.
12/02/2020

(8)

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

CP/158/IB/2018 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. Spring Field Shelters Private Limited***

M/s. Shriram City Union Finance Limited,
No. 123, Angappa Naicken Street,
Parrys, Chennai – 600 001

... Financial Creditor

-Vs-

M/s. Spring Field Shelters Private Limited,
No. 101, Near Ranga Vilas,
New Dhamu Nagar,
Pappanaickenpalayam,
Coimbatore - 641 037

...Corporate Debtor

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Financial Creditor : M. Sridevi, Advocate
For Corporate Debtor : None appeared*

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

Heard and dictated in open Court on 12.02.2020

1. Ld. Counsel for the Petitioner is present. It is represented that by the Order dated 22.01.2020 wherein this Tribunal was pleased to revive the Petition as originally filed by the Petitioner in CP/158/IB/2018 in view of the non-compliance

with the Memo of Compromise as filed by the parties in the main CP, which was also taken into consideration by this Tribunal as reflected from the Order dated 22.01.2020 and in the circumstances notice was directed to be issued to the Corporate Debtor and it is represented that the same has also been served. The Ld. Counsel for the Petitioner represents that to this effect an Affidavit of service has been filed on 11.02.2020 along with the postal tracking report and the copy of the notice issued to the Corporate Debtor in view of the revival of the main Petition as directed by this Tribunal.

2. A perusal of the Affidavit along with the postal tracking report discloses that the item seems to have been delivered to the Corporate Debtor. The Ld. Counsel for the Petitioner also brings on record in relation to the dispatch of the notice as made on 03.02.2020 vide consignment No. ET369803889IN of the acknowledgement card in original issued by the Corporate Debtor which clearly shows that the consignment have been received.
3. Despite the service of notice to the Corporate Debtor there is no representation on the part of the Corporate Debtor before this Tribunal and in the circumstance we proceed to hear the main CP. This Tribunal in relation to the revival

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Application on 22.01.2020 passed an Order which reads as follows:-

"Ld. Counsel for the Applicant is present and represents that based on the Joint Memo of Compromise which was filed in CP/158/IB/2018, this Tribunal had disposed of the matter vide Order dated 30.04.2019 taking on record the Joint Memo of Compromise.

Further the Ld. Counsel for the Applicant also brings to the notice of this Tribunal by virtue of the said Order, liberty was granted to the Financial Creditor to revive the Petition in the event of dishonoring of any of the cheques given based on the Joint Memo of Compromise by the Corporate Debtor.

The Ld. Counsel for the Applicant also brings to the notice of this Tribunal the averments made in the Application that the said Joint Memo of Compromise has not been adhered to and the cheques issued by the Corporate Debtor has been dishonoured and the Applicant has issued notices on 30.07.2019 and 25.09.2019 annexed with the Application as Annexure-D & E.

In the circumstance it is represented by the Ld. Counsel for the Applicant seeking to revive/restore the Petition in terms of the Order dated 30.04.2019. The Ld. Counsel for the Applicant also brings to the notice of this Tribunal that advance copy of the Application was also duly sent to the registered office address of the Corporate Debtor and an Affidavit of service has also been filed. It is evident from the postal tracking report that the consignment seems to have been delivered to the Respondent/Corporate Debtor, however, there is no representation on the part of the Respondent/Corporate Debtor.

*In the circumstance this Application stands **allowed**. The main CP/158/IB/2018 stands revived/restored on the file of this Bench of the Tribunal. The Applicant is directed to send notice to the Corporate Debtor privately as well as through the **Registry** of this Tribunal within a period of one week from today. An affidavit of compliance shall also be filed by the Applicant along with the postal tracking report. Post this matter on **12.02.2020**."*

4. It is clear from the said Order that this Tribunal has taken note of the Memo of Compromise as filed by the parties dated 30.04.2019 under which a sum of Rs.1,85,00,000/- has been agreed to be paid by the Corporate Debtor as against the original claim in a sum of Rs.3,57,41,892/-. A perusal of the said Memo of Compromise also discloses the following table in relation to the schedule of payment given thereunder which reads as follows:-

Sr.No	Bank name	Cheque No	Cheque date	Cheque amount in Rs
1	Remitted already to SCUF		26.04.2019 & 27.04.2019	2,50,000/-
2	The South Indian Bank Ltd	210047	30.04.2019	2,50,000/-
3	The South Indian Bank Ltd	210048	29.05.2019	5,00,000/-
4	The South Indian Bank Ltd	210049	29.06.2019	20,00,000/-
5	The South Indian Bank Ltd	210050	29.07.2019	10,00,000/-
6	The South Indian Bank Ltd	210051	29.08.2019	10,00,000/-
7	The South Indian Bank Ltd	210052	29.09.2019	20,00,000/-
8	The South Indian Bank Ltd	210053	29.10.2019	20,00,000/-
9	The South Indian Bank Ltd	210054	29.11.2019	30,00,000/-
10	The South Indian Bank Ltd	210055	29.12.2019	65,00,000/-
			Grand total	1,85,00,000/-

and as to how the amount of Rs.1,85,00,000/- is required to be paid evidenced from the above table.

5. In relation to the said Memo of Compromise it is represented by the Ld. Counsel for the Petitioner that even though initial three instalments have been paid aggregating to a sum of Rs.10 lakh, in relation to the balance it is due from 29.06.2019 onwards and ending on 29.12.2019, no payments have been made.
6. The Corporate Debtor despite service of notice has also chosen not to appear before this Tribunal and contest the Application as made by the Petitioner in relation to the non-payment of the amount under the Memo of Compromise as required to be paid by the Corporate Debtor which clearly points out that the Corporate Debtor is not in a position to pay even the agreed amount due under the Memo of Compromise and as agreed between the parties upon which this Tribunal has chosen to dismiss the Petition in view of the compromise as between the parties vide its Order dated 30.04.2019.
7. All the above facts clearly establishes that there is a default on the part of the Corporate Debtor in relation to the amount due to the Financial Creditor and the debt being the 'financial debt' as defined under the provisions of



Section 5(8) of the I&B Code, 2016 which has been defaulted this petition stands **admitted**.

8. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Petitioner – Financial Creditor is required to be admitted under Section 7(5) of the I&B Code, 2016.
9. The Financial Creditor has proposed the name of **Mr. P.Sriram**, Reg.No. IBBI/IPA-002/IP-N00292/2017-19/10895 as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP who is appointed as the IRP to 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 CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

10. As a consequence of the Application being 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 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."

11. 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.

(3) The provisions of sub – section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

12. 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.”

13. Based on the above terms, the Petition stands **admitted** in terms of Section 7 of the Code and the Moratorium shall come into effect as of this date. A copy of the order shall be communicated to the Petitioner as well as to the Respondent above named by the Registry. In addition, a



copy of this Order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

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