



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

CP(IB)/149(CHE)2023

(filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of
Insolvency and Bankruptcy Code 2016 (Application to Adjudicating Authority))

In the matter of *Sapphire Clothing Company India Private Limited*

P.JAYABALAN

3/271, Devanampalyam P.O

Pongalur 641667

Tiruppur District

Tamilnadu

... Applicant / Financial Creditor

-Vs-

SAPPHIRE CLOTHING COMPANY INDIA PRIVATE LIMITED,

CIN: U18101TZ2005PTC011776

5/422, Palladam to Pollachi Main Road

K Krishnapuram Village,

Kamanaickenpalayam , Tirupur

Coimbatore, Tamilnadu 641658

... Respondent / Corporate Debtor

Order Pronounced on 22nd November, 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Financial Creditor: Jayanthi K Shah, Advocate

For Corporate Debtor: M.Manikandan, Advocate

ORDER

(Heard through VC)

This application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) has been filed by **One Mr.P.Jayabalan** (hereinafter referred to as “**Financial Creditor**”) against **Sapphire Clothing Company**



India Private Limited (hereinafter referred to as “**Corporate Debtor**”) for initiating Corporate Insolvency Resolution Process (“**CIRP**”).

2. Part-I of the application sets out of the details of the Financial Creditor. It is stated that the Financial Creditor namely, P. Jayabalan, has been residing at No.3/271 Devanampalayam P.O , Pongalur 641667. Part-II of the applications sets out the details of the Corporate Debtor namely Sapphire Clothing Company India Private Limited. It is a Private Limited Company incorporated under the Companies Act, 1956 on 04.05.2005 with CIN No. U18101TZ2005PTC011776 and the Registered Office is situated at 5/422, Palladam to Pollachi Main Road, K Kamaickenpalaym, Tirupur 541658. In Part-III of the application, the Financial Creditor has proposed the name of S.R. Shriram Shekher (IBBI/IPA-03/IP-N000144/2017-2018/11598).

3. Part-IV of the application provides the total amount of debt as Rs.1,24,04,630.57 (Rupees One Crore Twenty Four Lakhs Four Thousand Six Hundred and Thirty and Paise Fifty Seven only) with interest @1.50% p.m. as on 31.03.2023. Further, the Date of Default is shown as 30.06.2023.

4. Part-V of the application describes the particulars of the Financial Debt, documents, records and evidence of the default as below:

- a. Board Resolution of Corporate Debtor dated 01.04.2022 and 28.04.2022.
- b. MOU dated 31.03.2023.
- c. Demand Promissory Note for Rs.1,24,04,630.57 dated 31.03.2023
- d. Acknowledgement of Debt dated 31.03.2023.



- e. Bank Statement dated 12.07.2023 and 14.07.2023 of Financial Creditor.

FACTS OF THE CASE:

5 It is stated that at the request of the Corporate Debtor namely Sapphire Clothing Company India Private Limited, based on the Board Resolution dated 01.04.2022 & 28.04.2022, the Financial Creditor started providing financial assistance to the Corporate Debtor. The same was enhanced from time to time and the total payment made by the Financial Creditor was Rs.2,40,28,630.57/-. Out of the said sum, a sum of Rs. 1,16,24,000/- was repaid by the Corporate Debtor, leaving a balance of Rs. 1,24,04,630.57 to be paid to the Financial creditor.

6. It is stated that having delayed the full payment to the Financial Creditor, the Corporate Debtor by way of Promissory Note dated 31.03.2023 agreed to repay a sum of Rs.1,24,04,630.57 along with interest at 9.50% p.a. within 3 months from 31.03.2023.

7. It is stated that the Corporate Debtor has not repaid any amount towards the loan amount with interest as per the Memorandum of Understanding dated 31.03.2023.

8. It is stated that the financial creditor ~~had~~ took up with Corporate Debtor through communication and in person to repay the amount but it did



not yield any result. It is stated since the Corporate Debtor defaulted to pay the dues, the financial creditor has filed this application under Section 7 of IBC Code read with Rule 4 of IBBI (Application to Adjudicating Authority) Rules 2016.

REPLY FILED BY THE RESPONDENT:

9 The Corporate Debtor filed a reply vide *S.R.No.4142* dated *27.09.2023*.

10. It is stated that the Corporate Debtor had been carrying on clothing business for more than sixteen years and earned a good reputation in the market. During Covid 19 period, various orders placed by purchasers were cancelled, however the Corporate Debtor had partly produced and purchased some basic materials for production and payments and also made for such materials purchased. The Corporate Debtor faced heavy financial blow due to the above mentioned reasons during the lockdown period and incurred loss of Rs.10.29 crores in Financial Year 2020-21 and Rs. 7.79 cr in Financial Year 2021-22.

11. It is stated that the Corporate Debtor had sought financial assistance from the private persons, including the applicant who was also the former Director of the Corporate Debtor upto 12.12.2019.

12. It is stated that the Corporate Debtor by its resolution dated 01.04.2022 and 28.04.2022 decided to borrow from the applicant and authorised the



applicant to make payments for the liabilities of the Corporate Debtor with an understanding that all such payments made by applicant would be treated as unsecured loan in the books of the Corporate Debtor to the Applicant.

13. It is stated that based upon board resolutions stated above, the applicant made the payments to the tune of Rs.2,40,28,630.57 during the year 2022 to various parties out of which Rs. 1,16,24,000/-was repaid by the Corporate Debtor leaving a balance of Rs. 1,24,04,630.57 to be paid to the applicant.

14. It is stated that the Draft MOU shown by the applicant did not have the interest clause at the time of discussion with the Corporate Debtor. It is alleged that without giving opportunity given to the Corporate Debtor to look into the MOU, the signatures of the Corporate Debtor was obtained.

15. It is stated that at the initial time of providing financial assistance, the applicant had obtained signatures on 5 blank papers, out of which two were affixed with revenue stamp. The Financial Creditor used one of the five papers signed by the Corporate Debtor, as a Promissory Note.

A handwritten signature in blue ink, appearing to be 'J. Jayabalan', located below the main text.

A second handwritten signature in blue ink, appearing to be 'S. Sapphire', located below the main text.



16. It is stated that despite losses, the Corporate Debtor was able to repay the loan amount of Rs.4.41 crores to Indian Overseas Bank in addition to repayment of Rs.1.16 crores to the applicant.

17. It is stated that the Corporate Debtor believed the applicant and signed on the unfilled MOU, though it is disputing the calculation of outstanding dues. Further the applicant has failed to show how the calculation was arrived at and if the interest is not attached, the application does not fall at the threshold.

FINDINGS:

18. Heard the Submissions of both the parties and perused the documents placed on record.

19. The Counsel for respondent in the hearing dated 04.09.2023 submitted that Corporate Debtor was trying to settle the claim of the Financial Creditor. As there was no developments in this regard, the CIRP application was pursued.

20. The details of the disbursements made by financial creditor and the amount repaid by the Corporate Debtor submitted in the application filed by the financial creditor are as under:



P.JAYABALAN TRANSFERRED DIRECTLY TO BELOW PARTIES ON FY 2021-2022		
S.NO	PARTICULARS	AMOUNT
1	Term Loan	17,75,799.57
2	Poonawala Fincorp Ltd (MAGMA) (NBFC)	13,70,731
3	Neo Growth Credit Pvt Ltd (NBFC)	8,24,362
4	Adithya Birla Finance Ltd (NBFC)	10,00,000
5	TDS	1,60,005
6	GST	31,812
7	EB	1,30,860
8	Niventha Roadlines	22,972
9	Sri Mahalakshmi Road Lines	20,000
10	GHCL Ltd (Unit : Sree Meenakshi Mills)	50,000
11	R.Arumugam (ROSL)	13,000
12	Load Auto Maheswaran	4,200
13	Professional Charges	45,000
14	BBC Knits	50,000
15	Muthulakshmi Compacting	50,000
16	Harisaran Compacting	38,137
17	GSP Global Logistics	45,972
18	Dharniis Traders	81,330
19	Sapphire Clothing Company India Pvt Ltd	1,83,14,450
	Total Payments	2,40,28,630.57
	Less: Amount received From Sapphire Clothing Company India Pvt Ltd	1,16,24,000
	Balance to be Receivable	1,24,04,630.57

21. In the Counter filed by the respondent, in Para 7, the Corporate Debtor has admitted that the Applicant on behalf of Corporate Debtor had



made the payments totalling to Rs.2,40,28,630.57 out of which a sum of Rs. 1,16,24,000 was repaid to the Corporate Debtor to the Applicant leaving a balance of Rs. 1,24,04,630.57 to be paid to the applicant.

22. The amount due is above the threshold limit for admission to CIRP. The application has been filed within the limitation period.

23. The Financial Creditor has also provided the following documents as proof of the financial debt:

- a) Board Resolution of Corporate Debtor dated 01.04.2022 and 28.04.2022. MOU dated 31.03.2023.
- b) Demand Promissory Note for Rs.1,24,04,630.57 dated 31.03.2023
- c) Acknowledgement of Debt dated 31.03.2023.
- d) Bank Statement dated 12.07.2023 and 14.07.2023 of Financial Creditor.

24. Under the said circumstances, we are of the view that the present Application is required to be admitted in terms of Section 7(5)(a) of IBC, 2016. We therefore admit this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

25. The Financial Creditor has proposed the name of **Mr. S.R. Shriram Shekher**, Reg.No.IBBI/IPA-03/IP-N000144/2017-2018/11598, **e-mail ID: shekhershriraam@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 05.11.2024. We therefore appointed *Mr. S.R. Shriraam Shekher* 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.

26. 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;

27. 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.

28. 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.

29. 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.

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

SANJIV JAIN
MEMBER (JUDICIAL)