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

IBA/864/2020

*(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 **Greatshine Holdings Pvt Ltd***

RELIANCE COMMERCIAL FINANCE LIMITED

Registered Office at:

Reliance Centre, 6th Floor,
South Wing, Off Western Express Highway,
Santacruz (East), Mumbai – 400 005

Branch Office at:

Kothari Building, Sony World Building
No.10A, Haddows Road,
Nungambakkam, Chennai – 600 006.

... Financial Creditor

-Vs-

GREATSHINE HOLDINGS PVT LTD

No.272/2A, 2B,3A & 3B,
SV Chatram to Wallajah Road,
Kunnam Village.
Sriperumbudur Taluk,
Chennai – 631 604

...Corporate Debtor

*Order Pronounced on **28th April 2022***

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor : Mrs. Vidhyalakshmi Vipin, Advocate
For Corporate Debtor : B.Ramana Kumar

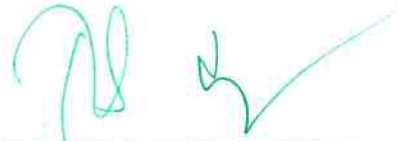
ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

This Application has been filed by one **Reliance Commercial
Finance Limited** (hereinafter referred to as 'Financial Creditor') on

12.07.2019 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 **Greatshine Holdings Pvt Ltd** (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 Financial Creditor is a Limited Company and it was incorporated in the year 17.08.2000. The registered office address of the Financial Creditor as per the Application is stated to be situated at Reliance Centre, 6th floor, South Wing, off Western express Highway, Santacruz (East), Mumbai -400 005 and the Branch Office address of the Financial Creditor is situated at Kothari Building, Sony World Building No.10A, Haddows Road, Nungambakkam, Chennai – 600 006. Further, Part-I lays down the details of the Authorized Representative of the Financial Creditor to be one Mr. Satheesh Kumar. P, Regional Legal Manager South of the Financial Creditor duly authorised by Power of Attorney dated 08.11.2017 placed at Page Nos 9 to 12 of the Typed set of the Application.



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 04.12.2008 with CIN: U40109TN2008PTC070082. The registered office of the Corporate Debtor as per the MCA master data and as per the application is situated at No.272/2A, 2B,3A &3B, SV Chatram to Wallajah Road, Kunnam Village, Sriperumbudur Taluk, Chennai – 631 604.

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. K. K. Balasubramanian, Reg. No. IBBI/IPA-001/IP-01544/2018-2019/12401.

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a debt amount of Rs.10,56,30,087/- (Rupees Ten Crores Fifty Six Lakhs Thirty Thousand and Eighty seven only) as on 31.05.2019 which is due and payable by the Corporate Debtor. The date of default as stated in Part IV of the Application is stated to be 31.05.2019.

6. Part V of the application describes the list of other documents attached to this application in order to prove the existence of Financial Debt as follows:

- a) Sanction Letter
- b) Term Loan Agreement
- c) Power of Attorney
- d) Affidavit Cum Undertaking
- e) Letter issued by the Corporate Debtor to TANGEDCO.

7. It was averred in the Application that the Financial Creditor had given loan to the Corporate Debtor for funding the 1 MW Solar Project ("PV") at Tamil Nadu under Roof Top PV and small solar Generation Programme (RPSSGP) of Jawaharlal Nehru Solar Mission (JNNSM) under control of Ministry of New and Renewable Energy (MNRE) (the project) had previously obtained the credit facility from Indian Renewable Energy Development Agency Ltd (IREDA) ("Existing Lender") of Rs.9.17 crore (Rupees Nine Crores and Seventeen Lakh Only) ("Existing Loan") of which Rs. 8,25,51,400/- (Rupees Eight Crore Twenty Five Lakh Fifty One Thousand Four Hundred only) was outstanding as on 05.08.2013.

8. It was further averred in the application that the Corporate Debtor approached the Financial Creditor for financial assistance for a sum of Rs. 13 Crores (Rupees Thirteen Crores only) ("Term Loan Facility") and entered in to a Term Loan Agreement dated 05.08.2013 ("Loan Agreement") with the Financial Creditor for the purpose of (a) repayment of the outstanding balance to the IREDA (b) payment of capital creditors of the project (full and final settlement of entire dues)

and Balance Post (a) and (b) above, if any towards reimbursement of part of project expenses to promoters on the terms and conditions of the Loan Agreement.

S.No.	TERM LOAN ACCOUNT AGREEMENT/DETAILS	TOTAL AMOUNT SANCTIONED	DATE OF DISBURSEMENT
1	RLIPMUM000269785	Rs. 13 crore	05.08.2013

9. In relation to Corporate Debtor, before venturing into the counter affidavit filed by the Corporate Debtor it is relevant to refer to the record of proceedings of this Tribunal dated 03.09.2021, wherein it has been recorded as follows;

Matter is called. There is no representation for the Petitioner. Learned Counsel on behalf of BFS Legal appears for the Respondent through video conferencing platform.

When this matter came up for hearing on 29.07.2021, the Petitioner sought further time to file additional documents. As per the records, no additional documents have been filed in the Registry.

This Application was filed on 12.07.2019.

A last opportunity is given to the Respondent to file vakalath and counter.

The Respondent shall file their vakalath and counter in the Registry within two weeks from now. The Petitioner is directed to serve a copy of the Application along with the documents to the Respondent within three working days from now.

List this matter on **04.10.2021** as a last chance for hearing and disposal. No further adjournment shall be granted in the matter.

10. Thereafter, when the matter came up for hearing on 02.11.2021 before this Tribunal, the following orders were passed;

Matter is called. There is no representation for the Petitioner. The Respondent is represented by Mr. Akhil Bhansali, Advocate through video conferencing platform.

Learned Counsel for the Respondent states that the counter along with an Application for delay in filing the counter has been filed in the Registry.

List this matter on **22.11.2021** for further hearing.

11. Subsequently, when the matter came up for hearing on 22.11.2021, the following orders were passed;

Matter was called. It was passed over for hearing. However, when the matter was again called, none is present before us for the Petitioner.

Learned Counsel for the Respondent who appears on behalf of M/s. BFS Legal seeks last opportunity to file their counter. Learned Counsel for the Respondent is given a last chance for filing a counter along with the delay Application to condone the delay in filing the counter in the Registry and the same shall be filed within two working days from now.

List the interim Application along with the main Application for hearing and disposal on **16.12.2021**.

12. Again on 16.12.2021, the Respondent has sought adjournment, which is recorded in the daily order, as follows;

Ms. Mokshavathi, Advocate appears on behalf of Learned Counsel on record Mr. Vipin Warriar, Advocate for the Petitioner and the Respondent is represented by Learned Counsel who appears on behalf of M/s. BFS Legal through video conferencing platform.

Representing Counsel for the Petitioner states that the Learned Counsel on record for the Petitioner is unwell and hence seeks adjournment.

At request of the Representing Counsel for Petitioner, the matter stands adjourned to **21.01.2022** for hearing and disposal

13. Again on 21.01.2022, the following orders were passed;

Ms. Vidyalakshmi Vipin, Advocate appears for the Petitioner and the Respondent is represented by Mr. Rigvedh, Advocate of BFS Legal through video conferencing platform.

At request of Learned Counsel for the Petitioner, matter stands adjourned to **21.02.2022** for final hearing.

14. When the matter was taken up for hearing on 21.02.2022, it was observed by this Tribunal as follows;

The Petitioner is represented by Ms. Vidyalakshmi Vipin, Advocate and the Respondent is represented by Learned Counsel of BFS Legal through video conferencing platform.

Heard the Learned Counsel for Petitioner.

Learned Counsel for the Respondent states that e-filing of the counter was filed on 01.10.2021 along with condonation of delay Application. The Respondent is directed to file physical copy of the counter along with condonation of delay Application on or before 22.02.2022.

List this matter on **24.02.2022** for further hearing.

15. On 24.02.2022, the Petitioner has stated that settlement talks are underway and sought for an adjournment;

Ms. Vidyalakshmi Vipin, Advocate appears for the Petitioner and Mr. Akhil Bhansali, Advocate appears for the Applicant / Respondent through video conferencing platform.

IA/202(CHE)/2022 is filed to condone the delay in filing counter in IBA/864/2020.

Learned Counsel for the Petitioner states that the settlement talks are underway.

At request of both Counsels, the Petition stands adjourned to **29.03.2022**. No further adjournment shall be granted in this matter.

16. When the matter came up for hearing before this Tribunal on 29.03.2022, the following orders were passed;

The Applicant is represented by Ms. Vidhya Lakshmi, Advocate and Respondent is represented by Mr. Akhil Bhansali, Advocate of M/s. BFS Legal through video conferencing platform.

IBA/864/2020 was filed on 12.07.2019 and pending on the file of this Adjudicating Authority since then.

IA/202(CHE)/2022 is filed by the Corporate Debtor / Applicant seeking an order to condone the delay of 14 days in filing the counter. However, counter has been filed along with the application. Learned Counsel for the Applicant seeks an adjournment on the ground that the matter is likely to be settled.

IA/202(CHE)/2022 stands **Allowed** with the cost of Rs.50,000/- to be paid by the Applicant for Prime Minister's Relief Fund on or before two weeks from now, and file compliance memo on or before 12.04.2022.

Learned Counsel for the Petitioner in IBA/864/2020 seeks time to make his submissions.

At request of Learned Counsel for the Financial Creditor, matter stands adjourned to **25.04.2022. Mark a copy of this order to the IBBI for their records.**

17. On 25.04.2022, when the matter came up for hearing, it is seen that the Respondent counsel has filed a memo stating that the Counsel had intimated the Corporate Debtor about the cost of Rs.50,000/- which was imposed for the delay of 14 days in filing the counter. However, it is stated in the memo that the Corporate Debtor has not complied the order and hence the counsel has given change of vakalat to Mr. Ramana Kumar. The said fact was recorded and the matter was listed on 26.04.2022.

18. Finally on 26.04.2022, Learned Counsel Mr. B.Ramana Kumar appeared for the Respondent and since the orders not been complied with, this Tribunal was perforced to set Respondent set ex-parte and passed the following order;

Mrs. Vidhya Lakshmi appears for the Applicant. Mr,B.Ramana Kumar appears for the Respondent.

By order dated 29.03.2022, 14 days delay in filing counter was ordered on the cost of Rs.50,000/-. However, Respondent ought to pay the amount on or before 12.04.2022. The matter was listed on 25.04.2022 and there was no representation for the Respondent.

Hence listed today on 26.04.2022, Mr.B.Ramana Kumar appears for the Respondent, since the orders are not been complied with. The Respondent called ex-parte. Heard the Arguments of the Petitioner. **Orders Reserved**

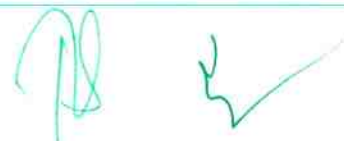
19. The above extract of the orders passed by this Tribunal would show that the Respondent has show complete disregard of the order passed by this Tribunal and the Respondent is trying to adopt a dilatory tactics by seeking adjournment on the pretext of filing counter and wilfully failed to comply with the orders.

20. Be that as it may, for the Corporate Debtor had filed a Counter wherein the Corporate Debtor in para 8 of the Counter had stated that a bare perusal of the statements of ledger which has been submitted along with the application, would reveal that the Respondent even though occasionally delayed in payments of interest, has attempted to discharge of its dues of every month by paying lump sum amounts and

further alleged that the claims raised by the Financial Creditor is not legally valid.

21. Heard the submissions made by the Learned Counsel for the Petitioner and perused the records including the pleadings placed on record. This Tribunal after comprehensively hearing the said matter is of the view that it can be seen from the Repayment Schedule placed at Page No 110 of the Application, the principal outstanding amounting to Rs. 9.52 Crores. Thus from the records it is clear that an amount is payable by the Corporate Debtor to the Financial Creditor.

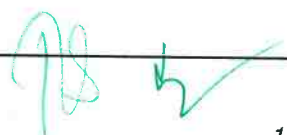
22. It can be further seen from the statement of accounts as placed by the Financial Creditor that the Corporate Debtor has been irregular in repaying the instalments as and when it fell due which has stated by the Financial Creditor and no payments has been made by the Corporate Debtor. Thus, it is categorically clear that there is a debt and default on the part of the Corporate Debtor. It can be seen from the records of the proceedings placed before us that, settlement talks were prevalent between the Financial Creditor and the Corporate Debtor but the same did not fructify. Further the Financial Creditor had placed the Statement of ledger which reflects the outstanding amount which is due and payable by the Corporate Debtor.



23. Apropos, the Hon'ble Supreme Court in the case of **Innovative Industries Limited v. ICICI Bank Limited**, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial



creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

24. In view of the facts as stated *supra* and also in view of the 'financial debt' which is proved by the Financial Creditor and the 'default' being committed on the part of the Corporate Debtor, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

25. 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 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;

26. 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 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.

27. 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.

28. The Financial Creditor has proposed the name of **Mr. K K Balasubramanian** (email id :**kkbala2015@gmail.com**), **Reg. No. IBBI/IPA-001/IP-01544/2018-2019/12401** as the Interim Resolution Professional (IRP) who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 19.12.2022.

25. The IRP 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.

29. 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.

30. 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/is 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 under Section 20 of IBC, 2016.

31. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



32. 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. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI 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.

33. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

34. Post this IBA/864/2020 for hearing on **17.06.2022**.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
R. SUCHARITHA
MEMBER (JUDICIAL)

Raymond