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

CP (IB)/283/CHE/2021

*(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 **Greeta Musical Instruments Manufacturing and
Exporters Private Limited***

JJ Fincap Private Limited

(Formerly Radhasaomi Resources Private Limited)

Represented by its Authorized Signatory

Mrs. Kokila Gangan

JJ Manor, 146, Rukmani Lakshmi pathy Road,

2nd Floor, Egmore,

Chennai- 600 008

... Applicant/Financial Creditor

-Vs-

**Greeta Musical Instruments Manufacturing and
Exporters Pvt Ltd**

Registered Office at No 55, Village square,

Valluvarkottam High Road,

Nungambakkam,

Chennai- 600 034.

...Respondent/Corporate Debtor

Order Pronounced on 19th April 2022

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

For Financial Creditor : Mr. P.H. Arvinth Pandian, Senior Advocate

For Amrith Bhargav, Advocate

For Corporate Debtor : Mr Subhang Nair, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by one **JJ Fincap Private Limited** (hereinafter referred to as 'Financial Creditor') on 28.10.2021 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 **Greta Musical Instruments Manufacturing and Exporters 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 company registered under the Companies Act, 2013 with CIN: U65920TN1996PTC091070 on 06/03/1996. The Applicant Financial Creditor was formerly called as Radhasaomi Resources Private Limited. The Affidavit verifying the Application is placed at page No 10-11 of the Application typeset and the same authorizes Mr. Kokila Gangan as the Authorized signatory of the Financial Creditor.

3. Part II of the Application lays down the details of the Corporate Debtor from which it can be seen that the Corporate Debtor is a Private

Limited company incorporated under the Companies Act, 1956 on 15.09.1982 with CIN:U36999TN1982PTC009584. The registered office of the Corporate Debtor as per the Application is stated to be at No 55, Village Square, Valluvarkottam High Road, Nungambakkam, Chennai- 600 034.

4. From Part-III of the Application, it is seen that the Financial Creditor has proposed the name of one Mr. Lingumgunta Venkata Shyam Sundar with Registration No: *IBBI/IPA-002/IP-N00262/2017-18/10775* as the Interim Resolution Professional (IRP).

5. From Part-IV of the Application, it is seen that the Financial Creditor has claimed a sum of Rs.3,53,81,435/- (Rupees Three Crore Fifty Three Crore Fifty Three Lakhs Eighty One Thousand Four Hundred and Thirty Five only) as total Financial Debt due and payable by the Corporate Debtor as on 30.09.2021. Further, it can be seen from Part IV, that the date of default is stated to be 31.12.2019. The workings of the Financial Debt as averred in the Application is:-

S. No	PARTICULARS	AMOUNT (Rs.)
1	Outstanding Princip amount due	2,55,00,000
2	Add :	
a	Interest Due	76,50,000
b	Penal Interest Due	22,31,435
3.	Total Amount Due and Payable 3 = (1+2)	3,53,81,435

6. Part V of the Application describes the particulars of Financial Debt, documents, records and evidence of default and the list of documents in order to prove the existence of the Financial Debt is enumerated hereunder:-

- i) Master Data of JJ Finacap Pvt Limited from MCA
- ii) Board Resolution dated 13.08.2021
- iii) Proof of change in the Registered office of the Company and proof of Change in the name of the Financial Creditor
- iv) Master data of Corporate Debtor as per MCA
- v) Loan Agreement dated July 06, 2017
- vi) The Deed of Simple Mortgagee dated July 06, 2017
- vii) The supplemental Loan Agreement dated August 02, 2017
- viii) The deed of second simple mortgage dated August 02, 2017
- ix) The detailed calculation of the Total amount due and payable along with Dates of default
- x) Form CHG- I filed vide SRN G68703354 dated December 04, 2017 for Modification of Charge ID- 100137574
- xi) Form CHG-1 filed vide SRN No G68891068 dated December 05, 2017 for Modification of Charge ID 100137574.
- xii) The credit report issued by CIBIL for Madras Door company co-borrower evidencing the default.
- xiii) The Demand Notice dated September 16, 2021 issued to Madras Door company and Greeta Musical Instruments Manufacturing and Exporters Pvt Ltd., Mr. Rajiv Mani and Mr. Joseph Mani
- xiv) The consent of Mr. Lingumgunta Venkata Shyam Sundar to act as the Interim Resolution Professional.

7. It was submitted by the Learned Counsel for the Financial Creditor a loan was granted initially to the Corporate Debtor for Rs. 2,00,00,000/ through loan agreement dated 06.07.2017 and Rs.1,00,00,000/- in a supplemental loan agreement dated 02.08.2017. The Ld Counsel further submits that, the said amount was to repaid by the Corporate Debtor within 36 months of the date of the respective agreements.

8. Further the Ld counsel for the Financial Creditor submitted that the Loan agreements mentioned *supra* carries an interest of 20% per annum and further the interest payable by the Borrowers to the Lender shall be deposited in advance and the interest on a diminishing balance basis shall be paid in instalments on the 7th day of each month succeeding the date of agreement until the loan agreement is paid in full. The Ld. Counsel also submitted that loan agreement specifies that on default of payment of the said interest amount the Corporate Debtor is liable to pay a penal interest of 20% per annum.

9. Pursuant to the said Loan Agreements mentioned above the Ld. Counsel for the Financial Creditor submitted that a Deed of simple mortgage dated 06.07.2017 and 02.08.2017 was entered into by the Financial Creditor and the Corporate Debtor for securing a total value of Rs. 1,00,00,000/- respectively.

10. The Ld. Counsel for the Financial Creditor submitted that with regard to the above mentioned Loan Agreements IBA/740/2019 was initiated by the Financial Creditor. Thereafter, a joint compromise memo dated 03.12.2019 was arrived at between the parties, based on which this Tribunal vide order dated 03.12.2019 *allowed* the

withdrawal of the said Application with liberty to file a fresh Application on non- adherence of the joint memo of compromise.

11. The Ld. Counsel for the Financial Creditor submitted that the Corporate Debtor had completely stopped making payments towards the interest amount from the month of February 2020 itself and has been defaulting in payments on various dates. Further the Ld. Counsel submitted that as the Corporate Debtor had failed to adhere to the Joint Compromise memo dated 03.12.2019, the Financial Creditor is left with no other remedy, hence this present Application under Section 7 of the IBC, has been filed before this Tribunal.

12. The Respondent in this said matter has filed counter/ Reply statement. The Ld. Counsel for the Respondent submitted that, this Application is barred by Section 10A of the IBC, 2016 as Loan Agreements dated 06.07.2017 and 02.08.2017 stood novated by the Joint compromise memo dated 03.12.2019. Therefore. in accordance to the due date fixed by the Joint memo of compromise i.e. 30.06.2020 and if the same is construed as the date of default, this Application is hit by Section 10A of IBC, 2016.

13. The Ld. Counsel for the Respondent submitted that the Loan agreements dated 06.07.2017 and 02.08.2017 was executed by a disqualified director Mr. K. Joseph Mani. Further, it is averred in Para

9 the counter that, the disqualified director colluded with the Applicant by entering into illegal loan agreements for financial gain of his other companies and there were no financial transactions between the actual borrower and the Corporate Debtor. Thus, the Ld. Counsel for the Respondent submitted that this Application is liable to be dismissed *in limine*.

14. Pursuant to the Counter statement filed by the Respondent, the Financial Creditor had filed a Rejoinder to the effect. In the same, the Financial Creditor has categorically denied all the averments made in the counter statement filed by the Respondent as suppression of material facts as the debt was already admitted by the Corporate Debtor in an Application filed by the Financial Creditor in IBA/704/2019, which was later withdrawn by the virtue of the joint compromise memo dated 03.12.2019. Since the Corporate Debtor has violated the said terms and conditions under the joint compromise memo, the present Application has been filed.

15. Further, the Financial Creditor had stated that internal affairs of the Corporate Debtor like disqualification of the director and the alleged facts as stated by the Respondent in the counter statement are not material to the facts and circumstances of this case. Outsiders are not privy to the internal affairs of the Corporate Debtor

and doctrine of indoor management applies. The Ld. Counsel for the Financial Creditor submitted that, the Respondent in the counter statement had completely misguided the facts with malafide claims, thus is liable to be punished under Section 72 of the IBC, 2016.

16. Heard the submissions made by the Learned Counsel for both the parties and perused the records including the pleadings placed on record. This Tribunal after comprehensively hearing the said matter is of the view that, the existence of a 'debt' and 'default' had been proven beyond reasonable doubt by the Financial Creditor based upon the loan agreements and also Joint Compromise memo dated 03.12.2019 executed between both the parties. However, this Tribunal feels that the main contention of the Corporate Debtor that this present Application is barred by Section 10A of the IBC, 2016 as Loan Agreements dated 06.07.2017 and 02.08.2017 stood novated by the Joint compromise memo dated 03.12.2019 is not valid in the eye of law, since there can be only one date of default and the said date of default cannot be shifted as per the whims of the Corporate Debtor.

17. Further, the debt in question had arose in 2019 itself and it is not a fresh debt that is being hit by Section 10A of the IBC, 2016. This Tribunal is of the opinion that, this Application is filed in accordance to its order dated 03.12.2019, which clearly gives liberty

to the Applicant Financial Creditor to file a fresh Application under Section 7 of the IBC, 2016 on non- adherence to the Joint memo of compromise dated 03.12.2019. The said operative portion is extracted hereunder:-

“Taking into consideration the joint memo of compromise filed by the parties as well as Rule 8 of the I & B (Application to Adjudicating Authority) Rules, 2016, this petition stands withdrawn with the liberty given to the petitioner to approach this Tribunal with a fresh petition in case of non – adherence to the joint memo of compromise as filed by parties. Hence this Petition stands dismissed as withdrawn. Files to records. ”

18. 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.

19. Apropos, the Hon’ble Supreme Court in the case of **Innoventive Industries Limited v. ICICI Bank Limited**, 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.

20. Therefore, based on the facts and circumstances mentioned above this present Application stands **admitted**. 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;

21. 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.

22. 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.

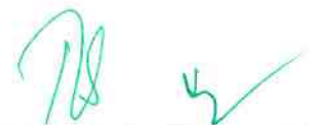
23. The Financial Creditor has proposed the name of **Mr. Lingumgunta Venkata Shyam Sundar** (shyam.ascend@gmail.com) with Registration No: IBBI/IPA-002/IP-N00262/2017-18/10775 as the Interim Resolution Professional (IRP) who has also filed his consent in Form – AA instead of Form-2. However upon verification from the IBBI website, it is seen that the Authorization for Assignment is granted to the said IRP till 27.12.2022.



24. 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.

25. 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 and file his report within 30 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. 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.

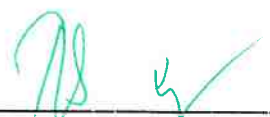


27. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

28. 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 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.

29. 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.

30. The IRP appointed is directed to file the revised Form- 2 with the Registry within three (3) days from the date of receipt of this order.



31. Post this CP/IB/283/CHE/2021 for hearing on **07.06.2022**.

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-

R. SUCHARITHA
MEMBER (JUDICIAL)

Vinita Varshini