IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
C.P. (IB) – 599 (PB)/2022

ORDER 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:

STATE BANK OF INDIA

..... APPLICANT/FINANCIAL CREDITOR

VERSUS

SCHIFFLIES INDIA LTD.

..... RESPONDENT/CORPORATE DEBTOR

MEMORANDUM OF PARTIES

STATE BANK OF INDIA
HAVING ITS CONCERNED BRANCH OFFICE AT:
STATE BANK OF INDIA, SAMB-I, 12TH FLOOR, JAWAHAR VYAPAR BHAVAN, 1, TOLSTOY MARG, NEW DELHI-110001.

..... APPLICANT/FINANCIAL CREDITOR

VERSUS

SCHIFFLIES INDIA LTD.
HAVING ITS REGISTERED OFFICE AT:
A-19, KALKAJI, NEW DELHI-110019
HAVING ITS CORPORATE OFFICE AT:
L-1/272, KALKAJI, NEW DELHI - 110019.

..... RESPONDENT/CORPORATE DEBTOR

ORDER PRONOUNCED ON: 21.10.2022

CORAM:
JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT

SHRI AVINASH K. SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)

Appearances:
For the Applicant : Adv. Siddharth Sangal
For the Respondent :

ORDER
PER: AVINASH K. SRIVASTAVA, MEMBER (TECHNICAL)

1. This is an Application, filed by the **STATE BANK OF INDIA**, (hereinafter referred to as **'SBI')**, the Financial Creditor (FC)/Applicant on **15.06.2022**, before this Adjudicating Authority, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC,2016) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating

Authority) Rules, 2016, (Adjudicating Authority Rules), for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against the Corporate Debtor (CD)/Respondent viz., **SCHIFFLIES INDIA LTD.**, for default in repayment of **Rs. 68,74,84,065.70** (Rupees Sixty-Eight Crores Seventy-Four Lakhs Eighty-Four Thousand and Sixty-Five and Paise Seventy Only) as on **06.05.2022**.

2. The CD/ Respondent viz., **SCHIFFLIES INDIA LTD.** was incorporated on 17/08/1999 as an Unlisted Public Company having **CIN:U74899DL1999PLC101189**, under the Companies Act, 1956. The Company is engaged in the business of export and distribution of women's wear such as western wear, salwar & woven garments, gent's shirts, lady's tops and lady's bottoms, etc. The CD's Registered Office is A-19, KALKAJI, NEW DELHI-110019, INDIA, and the CD's Corporate Office is L-1/272, KALKAJI, NEW DELHI – 110019, INDIA. Therefore, this Bench has jurisdiction to deal with this application. A copy of the Company Details/Master Data of the CD at **Annexure A-11. (Ref: Page 178-184, Volume 2 of the Application).**

3. **Submissions of the Financial Creditor/Applicant:**

I. The FC/Applicant is a Public Sector Bank of the Government of India formed and constituted under the State Bank of India Act, 1955, in which the

CD/Respondent is having Loan A/c bearing A/c Nos. 31508910582 (Cash Credit), 31585182040 (Term Loan 1), 32261768319 (Term Loan 2), and 32244538590 (Standby Line of Credit).

II. The CD approached the FC in May 2010 requesting for sanction of various credit facilities. The FC, after following the due procedure, vide its Sanction Letter dated 20.10.2010 sanctioned various credit facilities to the CD with a credit limit of Rs.17 Crores against primary and collateral security as well as personal guarantees, resultant, various loan documents dated 19.11.2010 were executed between FC and CD.

III. Subsequently, the CD, in December 2011, approached the FC for enhancement of sanctioned credit facilities, which were enhanced by the FC, after following the due procedure. Vide Sanction Letter dated 06.01.2012, the existing credit limits of Rs.17 crores were enhanced to Rs.27.25 crores against primary and collateral security and personal guarantees, resultant, various loan documents dated 07.01.2012 were executed between the FC and CD.

IV. The CD, after some initial payments of servicing the interest on loan amounts, did not adhere to the financial discipline. Accordingly, Letters/Notices of Irregularities dated 15.05.2013, 21.05.2013, 01.06.2013 & 17.06.2013 were issued by the FC to the CD informing that the loan A/c has been running irregular and interest is not serviced in time which will render the A/c turning into Non-Performing Asset ('NPA').

V. Despite the above Letters/Notices, the CD did not regularise its loan A/c, thus the loan A/c of the CD was classified as NPA on 30.06.2013 which information was conveyed to the CD vide Letter/Notice dated 31.07.2013 calling upon the CD to regularise its A/c at the earliest falling which the FC would be forced to initiate legal action.

VI. Even thereafter, the CD did not make payment of the outstanding amount to the FC, hence, the FC issued a Demand Notice dated 12.07.2014 under Section 13(2) of the SARFAESI Act, 2002 upon the CD, but no payment was received, The FC also initiated recovery proceedings against the CD under O.A. No. 394 of 2014, before Debts Recovery Tribunal – II, Delhi which has been decreed on 28.01.2019, and the recovery certificate RC No. 74 of 2019 is pending adjudication.

VII. The CD, after the account, turned into 'NPA', approached the Bank for restructuring the loan in March 2014 and also deposited a certain amount in the Bank. Thereafter, various communications were shared between the Bank and the CD, but nothing concrete could be offered by the CD. The CD, also, time and again offered One-Time-Settlement (OTS) proposals like on 28.11.2016 and 07.09.2017, but the same were too low to be considered or accepted by the FC. In fact, the CD has been time and again assuring the FC of making the payment of the outstanding amount, however, no payment has been made by the CD despite so-called assurances and promises. Recently, the CD approached the FC on or about 08.10.2021 through another OTS for settlement of its outstanding dues, however, the said settlement did not materialize. Till date, no payment has been made by the CD to the FC.

VIII. It appears that the CD has no intention of making payment of outstanding dues to the FC, hence, the FC has decided to file the present Application u/s 7 of the IBC, 2016.

IX. The total amount in default is a sum of **INR 68,74,84,065.70** (Rupees Sixty-Eight Crores Seventy-Four Lakhs Eighty-Four Thousand and Sixty-Five and Paise Seventy Only) as on **06.05.2022**, which includes:
Principal Amount of Claim- INR 29,11,92,474
Interest Claim Amount- INR 39,62,91,591.70
(Ref: Page 14, Part-IV, Volume 1 of the Application).

X. Further, the Applicant submits that only the existence of 'debt' and 'default' have to be considered by this Adjudicating Authority while examining/adjudicating an application under Section 7 of the Code. The Hon'ble Supreme Court in the matter of **M/s Innoventive Industries Limited v ICICI Bank & Anr AIR (2018)**

SCC 407 (Paragraph Nos. 28 and 30) has held that while deciding an application under Section 7 of the Code, the Adjudicating Authority only needs to be satisfied on the existence of debt and default. It has been held that the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the FC 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.

XI. The FC/Applicant has placed the following documents on record:

a) True copy of the Statements of Account of the CD along with Outstanding Amount and Record of Default held by the National E-Governance Services Limited (NeSL) dated 11.04.2022 at **Annexure A-10 (Colly.).**

b) True copy of the Balance Sheet of the CD for the year ended 31.03.2014 at **Annexure A-12.**

c) True copy of the Certificate of Registration of Charge dated 31.10.2012 at **Annexure A-13.**

d) Certificate under the Bankers Books Evidence Act, 1891 at **Annexure A-15.**

4. In the present case, the CD has not filed any reply and written submission till now. This Adjudicating Authority issued a Notice to the CD/Respondent on 22.08.2022,

returnable in seven days, which was duly delivered on 27.08.2022 on the various E-mail Ids of the CD and on 25.08.2022 through Speed post to the CD's Registered Office address and Corporate Office address, which returned as 'Item Returned Unclaimed' on 26.08.2022. But, despite several reminders, the CD chose not to contest this Application. Hence, the Present matter has proceeded ex-parte against the Respondent/CD.

5. **Analysis and Findings**

a. We have heard the learned Counsel appearing for the FC/Applicant. Mr. Siddharth Sangal, Ld. Counsel for the FC/Applicant states that advance notice in terms of Rule 4 of Adjudicating Authority, IBC Rules, 2016 has already been issued on the CD's Email id as of 15.06.2022.

b. It is clear from the reading of the above paragraphs that the debt of the Respondent/CD is due and payable to the Applicant/FC and there is admitted debt and default in payment of the debt of the Respondent/CD. We have considered the submissions made on behalf of the Applicant/FC and the material on record. Having discussed this aspect and considering the agreement entered into between the parties, the statements annexed for payment due as well as the OTS proposal for settlement was offered on or about 08.10.2021, thus admitting the debt. Thus, we hold that there is a debt which is due and payable both in law and in fact and the default has occurred within the meaning of provisions of section 7 of the IBC, 2016 and the default is more than the minimum amount stipulated under Section 4(1) of the IBC, 2016.

c. The present Application made by the Applicant/FC is complete in all respects as required by law. It is noted that the loan which was given in the year 2010 by the Applicant/FC. It is further noted that the amount of liability is appearing continuously in the financial statements of the Applicant/FC. The OTS proposal for settlement was offered on or about 08.10.2021 in which the CD has accepted his liability, on this basis, it is claimed that the application filed U/s 7 of IBC, 2016 is well within the period of limitation.

d. A certificate under the Bankers Book Evidence Act, 1891 has been filed by the FC along with the account statements relating to the CD in which financial debt was transferred by the FC and the entries therein are made in the ordinary and usual course of business. The said certificate further disclosed sufficient compliance with the provisions of the Bankers' Book Evidence Act, 1891.

e. Hence, we are inclined to admit this application.

6. **Order**

In light of the above facts and circumstances, it is, **hereby ordered** as follows: -

i. The Application bearing **C.P. (IB) – 599 (PB)/2022** filed by the **SBI,** the Applicant/(FC), under section 7 of the Code read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against

SCHIFFLIES INDIA LTD., the Respondent/(CD), is hereby admitted.

ii. As a consequence of the Application being admitted in terms of Section 7 of the Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. The Applicant/(FC) has proposed the name of **Mr. SANJEEV CHAUDHARY** as the IRP with the address E-263, Rear LGF, Greater Kailash-I, New Delhi - 110048. His email id is lawchartered@gmail.com. His registration number is **IBBI/IPA-001/IP-P-01892/2019-2020/12911.** He has filed his written communication **(Consent Form in Form 2, Page 208, Volume 2 of the Application)** as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with the Certificate of Registration **(Page 210, Volume 2 of the Application)** and Authorization for Assignment **(Page 210, Volume 2 of the Application)**. Accordingly, **Mr. SANJEEV CHAUDHARY** is appointed as IRP.

iv. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 7 of the Code. The expression immediately' means within three days as clarified by Explanation to

Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

v. During the CIRP period, the management of the CD shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.

vi. The IRP is expected to take full charge of the CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

vii. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

viii. The FC shall deposit a sum of **Rs 2,00,000/- (Rupees Two Lakhs only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors (CoC).

ix. In terms of Section 7(5)(a) of the Code, the Registry is hereby directed to communicate a copy of the order to the FC, the CD, the IRP and the Registrar of Companies, NCR, New Delhi, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the CD and specific mention regarding admission of this petition must be notified.

x. The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

7. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd

RAMALINGAM SUDHAKAR
(PRESIDENT)

Sd

AVINASH K. SRIVASTAVA
MEMBER (TECHNICAL)