

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-V

I.A. 2164 of 2023

IN

C.P.(IB) No. 2267/MB/2019

Under Section 60(5) of the Insolvency &
Bankruptcy Code, 2016

Shriram Finance Limited,

Sri Towers, Plot No. 14A, South Phase,
Industrial Estate, Guindy,
Chennai 600032

...Applicant

In the matter of

**Daikin Airconditioning India Private
Limited,**

...Financial Creditor

Vs

Kings Electronics Private Limited,

... Corporate Debtor

Order Pronounced on: 07.08.2023

Coram:

Hon'ble Shri. Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances:

The Applicant: Adv. Amir Arsiwala i/b Thodur Law Associates

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. The present Application is filed by the Applicant, Shriram Finance Limited, under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**“the Code”**) seeking the following reliefs:
 - a. Direct the Interim Resolution Professional to consider the claim of the Applicant submitted vide Form C dated 25.02.2020 and treat the Applicant as a Secured Creditor of the Corporate Debtor.
 - b. Declare that the Resolution Plan submitted by Hayaansh Optical Private Limited is contrary to Section 30 of the Code and reject the same.
 - c. Direct the Interim Resolution Professional to invite Expression of Interest afresh for submission of Resolution Plan with respect to Corporate Debtor.
 - d. Pass such further orders as the facts of the case may warrant and
 - e. For cost.

FACTS OF THE CASE

2. The Applicant is a Non-banking Financial Company who is one of the Financial Creditors of the Corporate Debtor and also a part of the Committee of Creditor.
3. It is submitted that the Applicant is a secured creditor of the Corporate Debtor. The Applicant had advanced the following loans to the Corporate Debtor:

| Sr. no. | Loan No. | Security type | Sanctioned amount | Date of disbursement | Claim Amount as on 04.11.2019. |
|---------------------------|-----------------------|----------------------|--------------------------|-----------------------------|---------------------------------------|
| 1 | CDBDRTF1803040 034 | Secured | 54,99,500 | 04-03-2018 | 63,55,336 |
| 2 | CDBDRTF1803040 036 | Secured | 54,99,500 | 04-03-2018 | 67,66,819 |
| 3 | CDBDRTF1803040 032 | Secured | 46,00,200 | 04-03-2018 | 56,61,554 |
| 4 | CDBDRTF1803040 029 | Secured | 46,00,200 | 04-03-2018 | 25,03,014 |
| 5 | CDBDRTF1803040 027 | Secured | 46,00,200 | 04-03-2018 | 25,01,493 |
| 6 | CDBDRTF1803040 030 | Secured | 46,00,200 | 04-03-2018 | 25,45,085 |
| 7 | CDBDRTF1803040 031 | Secured | 46,00,200 | 04-03-2018 | 56,63,075 |
| 8 | CDBDRTF1801300 010 | Secured | 23,48,000 | 30-01-2018 | 27,09,581 |
| 9 | CDBDRTF1801250 006 | Unsecured | 40,00,000 | 30-01-2018 | 33,37,097 |
| 10 | CDBDRTF1801300 008 | Secured | 87,00,000 | 30-01-2018 | - |
| 11 | CDBDRTF1801300 009 | Secured | 30,30,000 | 30-01-2018 | - |
| Total Claim amount | | | | | 3,80,43,054/- |

4. The Applicant has further submitted that the aforementioned loans were secured by way of mortgage created over the following properties of the Corporate Debtor:

1. Shop No. 06, Ground Floor A- wing, Lakhani's Exotica, Village Ulwe 1-B, Plot No. 166 & 167 sector No. 02, Tal Panvel, Dist. Raigad;

2. Shop No. 07, Ground Floor, B-Wing, Lakhani's Exotica, Village Ulwe 1-B, Plot No. 166, & 167, sector No. 02, Tal Panvle, Dist. Raigad;
3. Shop no. 08, Ground Floor, B wing, Lakhani's Exotica, Village Ulwe 1-B, Plot No. 166 & 167, sector No. 02, Tal Panvel, dist. Raigad;
4. Shop No. 3 Ground Floor, A-wing, Lakhani's, Village Ulwe 1-B, Plot No. 166 & 167, Sector No. 02, Tal Panvel, Dist. Raigad;
5. Shop No.2 Ground Floor, A-Wing, Lakhani's Exotica, Village Ulwe 1-B, Plot No. 166 & 167, sector No. 02, Tal Panvel, Dist. Raigad;
6. Shop No. 04, Ground Floor, A-wing, Lakhani's Exotica, village Ulwe 1-B, Plot No. 166 & 167, sector No. 02, Tal Panvel, Dist. Raigad;
7. Shop No. 05, Ground Floor, A-Wing, Lakhani's Exotica, village Ulwe 1-B, Plot No. 166& 167, Sector No. 02, Tal Panvel, Dist. Raigad;
8. Flat No. 304, 3rd Floor, Q wing, NeelkanthVishwa, Survey No. 139/0, 140/0, 142/0 Usarli-Khurd, Panvel.

5. The Adjudicating Authority vide order dated 04.11.2019 admitted the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor and appointed Ms. Poonam Basak as the Interim Resolution Professional of the Corporate Debtor. Pursuant to this, Public Announcement dated 11.11.2019 was published inviting claims from the creditors of the Corporate Debtor and the Applicant also submitted its claim in Form C dated 23.11.2019.

6. It has been submitted that due to some inadvertent errors, the Form C as submitted by the Applicant contained only five of the aforesaid loans and also referred to the said loans as 'unsecured loans'. On the Applicant's request, the IRP vide email dated 02.12.2019 directed the Applicant to submit a revised claim.

7. On 24.02.2020, the IRP had called upon the Applicant to submit certain documents and clarification with respect to the said loan. In response to this, the Applicant had submitted an amended Form C dated 25.02.2020,

mentioning the revised claim amount of Rs. 3,80,43,054/-. However, despite having submitted the revised claim within the given time, the IRP failed to take the same on record and proceeded with the formation of the COC treating the Applicant as an unsecured creditor.

8. The IRP received two resolution plans submitted by Infinitree Infiakon LLP and Hayaans Optical Private Limited. The COC approved the resolution plan submitted by Hayaansh Optical Private Limited by a majority vote of 92.54%.
9. It has been submitted that the Applicant has wrongfully been treated as unsecured creditor and not at par with other secured Financial Creditors.
10. The Applicant has further been submitted that the RP failed to consider the revised FORM C dated 25.02.2020 filed by the Applicant and proceeded on the basis of the previous Form C submitted by the Applicant which necessitated the filing of the present Application.

FINDINGS

11. We have heard the Ld. Counsel for the Applicant and perused the records.
12. The present application has been filed for seeking the directions to consider the Applicant as secured financial creditor as per the revised Form C dated 25.02.2020 submitted by the Applicant to the IRP. The Applicant has further sought the relief to reject the Resolution Plan submitted by Hayaansh Optical Private Limited and invite fresh Expression of Interest for submission of Resolution Plan.
13. The bench hereby has to resolve the following issues:
 1. Whether the Applicant is liable to be treated as secured financial creditors instead of unsecured financial creditor.

2. Whether the Resolution Plan approved by the Committee of Creditors is contrary to the Code.

14. The undisputed facts of the case are as follows:

- 1) vide order dated 04.11.2019, this Tribunal ordered CIRP against the Corporate Debtor and appointed Ms. Poonam Basak as Interim Resolution Professional.
- 2) the IRP had published the Public Announcement dated 11.11.2019 inviting claims from the creditors of the Corporate Debtors. Pursuant to this, the Applicant had submitted its claim in Form C dated 23.11.2019 for an amount of Rs. 2,73,77,506/- and further had submitted the revised Form C dated 25.02.2020 claiming an amount of Rs. 3,80,43,054/-.
- 3) The claim of the Applicant was admitted and the Applicant was made part of the COC with 3.30% voting share.

15. No reply has been filed in the present Application as the erstwhile IRP or Resolution Professional has not been impleaded as the party to the application.

16. However, the Resolution Professional during the course of the arguments has drawn the attention of this bench that the Applicant before filing its revised claim under Form C dated 25.02.2020, had already submitted its claim in FORM C twice on 23.11.2019 and 28.11.2019 claiming itself to be an Unsecured Financial Creditor. It has further been pointed out that the Applicant never raised an objection regarding his treatment as unsecured financial creditors and even the present application has been filed one year after the approval of the plan. Moreover, the Applicant even voted in favour of the Resolution Plan in the 14th COC meeting dated 24.06.2022.

17. It has been further observed by this bench that the Applicant in the present application has annexed revised Form C dated 25.02.2020 as "Exhibit H". In

the said Form C, under point 8, the Applicant itself has mentioned that **“The aforesaid loan was an unsecured loan”**. Therefore, the Applicant cannot be treated as secured financial creditor if the Applicant itself has mentioned the loan as unsecured loan. However, it is pertinent to mention here that the revised claim filed by the Applicant of Rs. 3,80,43,054/- had been admitted by the Resolution Professional. Therefore, the contention that the revised Form C of the Applicant dated 25.02.2020 has not considered by Resolution Professional is not sustainable at this belated stage when the Resolution Plan has already been approved by the COC and the Applicant has even voted in favour of the Plan.

18. It is noteworthy to mention that with regard to the status of the Applicant for treatment as a secured or unsecured financial creditor, the following observations have been made in the Resolution Plan by the Resolution Professional.

“In case of Shriram City Union (“Shriram”), the Financial Creditor has been treated as unsecured, as per the information provided by Resolution Professional. It is understood that the CD and Shriram had entered into a sale arrangement for all the assets (“Shriram Assets”) held as security by Shriram (as listed in Annexure IV) and it had also received consideration against some of the assets sold. In case i) Shriram’s claim is revised from unsecured to secured at any time prior to Approval of the Resolution plan by the Adjudicating Authority, ii) Shriram is able to provide the peaceful possession of the Shriram Assets to the CD and iii) Shriram is able to provide NOC from the respective counterparties with whom such sale deed/agreement to sale were made for the Shriram Assets, the RA proposes to pay an amount equivalent to the Liquidation Value of the Shriram Assets within 60 days of meeting all the three parameters. In case Shriram is able to meet all the three parameters for some, but not all of the Shriram Assets, then it shall be paid the pro-rata amount of the Liquidation Value of such assets. In such a reclassification scenario, the amount allocated to Shriram as an unsecured FC shall be adjusted from the proposed payment as a secured FC. On payment of the full and final amount, the said Shriram Assets shall stand to be released immediately from security interest of Shriram”.

19. From the above observations, it appears that the Applicant had already entered into some sale arrangement with respect to the assets held as security by the Applicant and has also received the consideration against

some of the assets sold. The Resolution Plan further mentions that that claim of the Applicant can be given the treatment of the secured financial creditor subject to fulfilment of certain terms. The above given facts have not been disclosed by the Applicant while filing the present application. Thus, the Applicant has withheld certain material facts while filing the application. Moreover, the Applicant has not impleaded the erstwhile Resolution Professional or the Resolution Professional as a party to the IA. Had they been impleaded as party to the Application, there would have been some possibility of clarification from them with regard to the averments made in the application. Even otherwise, the Application has been filed at a belated stage, that too after the Plan is approved by the CoC. With the above observation, this Bench is of the considered view that the present Application is without any merit and deserves to be dismissed.

20. Accordingly, I.A. 2164 of 2023 is **dismissed** and **disposed of**.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)