



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SPECIAL BENCH-I, CHENNAI**

CP/IB/85/CHE/2023

*(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 UNIMAC PLASTIC TECHNOLOGY PRIVATE LIMITED

SHRIRAM FINANCE LIMITED

(Formerly Known as

Shriram Transport Finance Company Limited)

Rep By its power of attorney

Mr. M. Sakthivel

Registered Office at 14A, South Phase

Industrial Estate, Guindy,

Chennai- 600 032.

...Applicant/Financial Creditor

-Vs-

UNIMAC PLASTIC TECHNOLOGY PRIVATE LIMITED

Represented by its Director

P. Raja & P. Gnanasekaran,

No. 45/3, Kundrathur Main Road,

Kovur, Mugalivakkam,

Chennai- 600 125.

...Respondent/Corporate Debtor

C O R A M

**SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant : Elayarajkumar, Advocate.

For Respondent : ex-parte.

Order Pronounced on 31st August 2023



ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This is an Application filed by SHRIRAM FINANCE LIMITED (hereinafter the "Financial Creditor") against UNIMAC PLASTIC TECHNOLOGY PRIVATE LIMITED (hereinafter the "Corporate Debtor") under Section 7 of the Insolvency and Bankruptcy Code ,2016 seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor herein.

2. In Part-I of the Application, it is stated that the Financial Creditor viz., *Shriram Finance Limited* is a NBFC/public listed company with CIN: L65191TN1979PLC007874. It was incorporated on 13.06.1979 under the Companies Act, 1956. The Corporate Debtor herein viz., *Unimac Plastic Technology Private Limited* was incorporated under the Companies Act, 1956 on 01.12.2005 with CIN:U24139TN2005PTC058170. In Part-II of the Application the Registered office of the Corporate Debtor is stated to be No.45/3, Kundrathur Main Road, Kovur, Mugalivakkam, Chennai- 600 125.

3. In Part III of the application, the Financial Creditor has proposed one Ms. Sathyadevi Alamuri with Registration No: IBBI/IPA-002/IP-



N00071/2017-2018/10205 as the "Interim Resolution Professional" of the Corporate Debtor. The Written Consent of the IRP is appended as Annexure-II of the Application typeset.

4. The Affidavit verifying the application is placed at Page No 16-17 of the Application typeset and Mr.Saktivel, Senior Executive of Shriram Finance Limited viz., the Financial Creditor herein has sworn the Affidavit as the authorized representative of the Financial Creditor.

5. In Part-IV of the Application, it is stated that a total sum of Rs.2,95,24,65 /- (Rupees. Two Crore Ninety Five Lakhs Twenty Four Thousand and Sixty Five) is the amount claimed by the Financial Creditor as the Financial debt, due and payable by the Corporate Debtor. Further the date of default in the Application is stated to be 27.09.2019.

6. Part – V of the Application discloses about the details of the documents which have been filed by the Financial Creditor to prove the existence of a 'Financial debt' and the same are enumerated hereunder:-

1. *Copy of Certificate of Incorporation of the Corporate Debtor- Annexure 1 (I)*
2. *Notice of Situation (Form-18) notifying the Registered Office of the Corporate Debtor. Annexure 1 (II).*



3. *Copy of GST Certificate of the Corporate Debtor. Annexure 1 (III).*
4. *Business Loan (Term Loan) Application – Annexure 1 (IV).*
5. *Term Loan Agreement executed by the Corporate Debtor in favor of the Financial Creditor – Annexure 1 (V).*
6. *Letter of Guarantee executed by Mr. R. Balakrishnan for the loan availed by the Corporate Debtor- Annexure 1 (IV).*
7. *Memorandum of Deposit of Title Deed executed by Corporate Debtor in favour of Financial Creditor- Annexure 1 (VII).*
8. *Recall Notice issued by the Financial Creditor calling for payment the outstanding by the Corporate Debtor with the postal Tracking and acknowledgment card- Annexure 1 (VIII).*
9. *Record of Financial Information (Form C) submitted by the Financial Creditor in NeSL- Annexure 1 (IX).*
10. *Summary of Loan and statement of Account- Annexure 1(XI).*
11. *Business Loan (Term Loan) Application- Annexure 1 (XI).*
12. *Term Loan Application executed by the Corporate Debtor in favour of the Financial Creditor- Annexure 1 (XII).*
13. *Letter of Guarantee executed by Mr. R. Balakrishnan for the loan availed by the Corporate Debtor- Annexure 1 (XIII).*
14. *Demand promissory Note issued by the Corporate Debtor in favour of the creditor- Annexure 1 (XIV).*



15. *Memorandum of title deed executed by the Corporate Debtor in favour of Financial Creditor- Annexure 1 (XV).*
16. *Recall Notice issued by the Financial Creditor calling for payment the outstanding by the Corporate Debtor with the postal Tracking and acknowledgment card- Annexure 1 (XVI).*
17. *Arbitral Award passed in Arbitration Case No 176 of 2020- Annexure 1 (XVII).*
18. *Record of Financial information (Form C) submitted by Financial Creditor in NeSL portal- Annexure 1 (XVIII).*
19. *Summary of Loan and statement of Account- Annexure 1 (XIX).*
20. *Summary of Tabulation- Annexure 1 (XIX).*
21. *Special power of Attorney executed by the Applicant- Annexure- 1 (XXI).*
22. *Certificate of Incorporation pursuant to change of name of the Financial Creditor- Annexure 1 (XXI).*

7. Ld. Counsel for the Applicant submits as under :-

- (i) That the Financial Creditor is an NBFC incorporated under the Companies Act, 1956.
- (ii) That the Corporate Debtor herein Unimac Plastic Technology Limited is engaged in the business of trading, buying and



selling in all kinds of plastic Components, moulds & dies, Jigs, fixtures etc.

- (iii) That the Corporate Debtor herein in the course of its business activities, rep by its directors one Mr. Balakrishnan R., one Mr. Raja and one Mr. P.Gnanansekararan had approached the Financial Creditor on 21.12.2017 seeking for Loan and subsequently submitted a loan Application.
- (iv) That in response to the loan application submitted by the Corporate Debtor the Financial Creditor sanctioned a Term Loan of Rs.50,00,000/-(Fifty Lakhs only) on 27.02.2018 to the Corporate Debtor and Term Loan Agreement (hereinafter TLA) dated 27.02.2018 was executed between the Corporate Debtor and the Financial Creditor. Further one Mr. R. Balakrishnan Ramasamy stood as the Guarantor for the loan availed by the Corporate Debtor from the Financial Creditor.
- (v) That subsequently, as security of the Term loan disbursed by the Financial Creditor in favour of the Corporate Debtor, a Memorandum of Deposit of Title Deed dated 27.02.2018 was executed in favour of the Financial Creditor, the same was



registered as *Document No.1926 of 2018* on the file of the SRO, Saidapet.

- (vi) That the Term Loan availed by the Corporate Debtor, was agreed to be repaid in 60 monthly installments. The 1st installment being Rs.1,41,553/-, the 2nd to 59th monthly installments being a sum of Rs.1,18,950/- per month and 60th installment being payable a sum of Rs.1,25,553/- commencing from 10.04.2018 to 10.03.2023.
- (vii) That as per the TLA dated 27.02.2018 the Corporate Debtor had agreed to pay interest of 15% p.a. It was agreed by the Corporate Debtor that, in case of default committed towards the loan installments, an additional interest of 36% per annum would be charged over normal lending rate of Financial Creditor.
- (viii) That on 04.10.2018, the Corporate Debtor again approached the Financial Creditor seeking a Term loan. Considering their request, the Financial Creditor sanctioned a Term Loan of Rs.1,00,00,000/-(One Crore only) on 17.10.2018 to the Corporate Debtor.



- (ix) That in continuation, a Demand Promissory Note dated 17.10.2018 was executed by the Corporate Debtor in favour of the Financial Creditor for a sum of Rs.1,00,00,000/- (Rupees One Crores Only) agreeing to repay the same together with compounding Interest at the rate of 15% per annum with monthly rests, for value received. Further Term Loan Agreement (TLA) dated 17.10.2018 was executed between the Financial Creditor and the Corporate Debtor.
- (x) That as security of the Term loan disbursed by the Financial Creditor in favour of the Corporate Debtor, a Memorandum of Deposit of Title Deed dated 03.10.2018 was executed in favour of the Financial Creditor, the same was registered as *Document No.2165 of 2018* in the file of the SRO, Perambakkam.
- (xi) That as per the TLA dated 17.10.2018, the term loan availed was agreed to be repaid in 60 monthly installments. The 1st to 59th monthly installment being a sum of Rs.2,38,253/- per month and 60th installment being a sum of Rs.2,38,229/- commencing from 20.11.2018 to 20.10.2023.



- (xii) That the Corporate Debtor agreed to pay interest at the rate of 15% per annum or at such other higher rate as may be notified by SFL from time to time calculated and charged in respect of the loan and also agreed in addition to that interest shall be charged at the rate of 36% per annum over the normal lending rate of the Financial Creditor payable with compound Interest with monthly rates in case of default committed by the Corporate Debtor towards the loan installments due and payable by the Corporate Debtor.
- (xiii) That the Corporate Debtor had paid a sum of Rs. 51,36,808/- and thereafter the Respondent/Corporate Debtor failed and neglected to pay the monthly instalments/outstanding due amount, in spite of repeated requests and demand for repayment made by the Financial Creditor.
- (xiv) That on account of the default committed by the Corporate Debtor the loan account maintained by them with the Financial Creditor was classified as Non-Performing Asset (NPA) on 20.12.2020.

A handwritten signature in green ink, consisting of a stylized 'S' followed by a checkmark-like flourish.



(xv) That as a consequence of the loan account becoming NPA, the Financial Creditor issued registered recall notice on 23.08.2019 to the Corporate Debtor, in respect of the Term loan of Rs.1,00,00,000/- but no response was given by the Corporate Debtor.

(xvi) That the Financial Creditor issued another recall notice to the Corporate Debtor on 05.02.2020 calling upon it to settle the entire outstanding amount, due and payable by it. As the Corporate Debtor failed and neglected to pay the amount, the Financial referred the dispute, to the sole Arbitrator as per clause-9 of the agreement, before the sole Arbitrator, praying to pass an award for Rs.1,00,87,898/- with interest @ 36% p.a.

(xvii) That the Arbitration Case No.176 of 2020 came before the Sole Arbitrator Mr.K. Balasubramanian. In the said Arbitration Proceedings the Corporate Debtor even after receipt of summons has chose not to appear. The Arbitrator after adjudicating the claim passed an award for a sum of Rs.1,00,87,898/- (Rupees One Crores Eighty Seven Thousand Eight Hundred and Ninety Eighty Only) with interest @ 18%



p.a. from the date of Claim petition (25.10.2020) till the date of realization. The said award is placed as Annexure 1 (XVII) of the Application typeset.

8. Ld. Counsel for the Applicant submitted that in view of the facts and circumstances, a clear case of debt and default is established. The Ld. Counsel concluded his arguments by praying that this Tribunal may pass an order of CIRP against the Corporate Debtor considering the defaults committed in repayment of loan dues, liable to be paid by the Corporate Debtor in accordance to the terms and conditions of the Term Loan Agreement dated 27.02.2018 and Term Loan Agreement dated 17.10.2018.

9. The Financial Creditor has annexed the latest record of default as per the tribunal directions in order dated 26.06.2023 in a separate typeset filed along with the Application in **SR No 3144 dated 27.07.2023**. The record of default reflects "Deemed to be authenticated".

10. It can be seen from the record of proceedings before this Tribunal that ample opportunity was given to the Corporate Debtor to enter appearance in this present matter and file reply statement. On the hearing dated 26.06.2023 one Mr. Saurabh Mishra, Advocate had appeared before



this Tribunal and undertaken to file vakalathnama. The said order is extracted hereunder for reference:-

**NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH (COURT- I) CHENNAI**
ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **26.06.2023** THROUGH VIDEO CONFERENCING

**PRESENT: HON'BLE SHRI SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI SAMEER KAKAR, MEMBER (TECHNICAL)**

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/85(CHE)/2023
NAME OF THE PETITIONER(S) : Shriam Finance Ltd
NAME OF THE RESPONDENTS : Unimac Plastic Technology Pvt Ltd
UNDER SECTION : Sec 7 Rule 4 of IBC, 2016

ORDER

Petitioner is represented by Ld. Counsel Mr. Ilayarajkumar for Ramalingam & Associates. Respondent is represented by Ld. Counsel Mr. Saurabh Mishra through video conferencing mode.


Mr. Saurabh Mishra undertakes to file Vakalath by the end of the day today. He states that he has received the copy of the Application. He seeks and is granted 2 weeks' time to file reply.


Rejoinder, if any, be filed within 7 days thereafter.

It is seen that additional affidavit has been filed under SR No. 2457 dated 16.06.2023 attaching there with a copy of record of default with information utility with authentication status "no authentication done by any parties till now".

In absence of record of default with information utility with authentication status, for the time being, we are unable to proceed in the matter.

List the matter on **24.07.2023** for hearing.


[SAMEER KAKAR]
MEMBER (TECHNICAL)


[SANJIV JAIN]
MEMBER (JUDICIAL)

11. In the instant case, the Petitioner/Financial Creditor had served notice to the Corporate Debtor and the Affidavit of service was filed before this Tribunal in SR No 2458 dated 16.06.2023. Thus even after awarding opportunity to the Corporate Debtor the Respondent failed to file a reply/counter statement in this matter. Hence, this Tribunal was



constrained to set the Corporate Debtor *ex-parte* in the hearing dated 07.08.2023 and proceed with the present Application.

12. The Financial Creditor has placed on record Term Loan Agreement dated 27.02.2018 and Term Loan Agreement dated 17.10.2018 to prove that there is an existence of a Financial debt, which has been disbursed by the Financial Creditor. Further, the record of default attached by the Financial Creditor in **SR No 3144 dated 27.07.2023** it is evident that there is an existence of 'default' committed by the Corporate Debtor.

EXTRACT OF NESL RECORD OF DEFAULT ANNEXED BY THE FINANCIAL CREDITOR IS AS UNDER:-

Date of Submission	28-06-2023 11:09:08
Type of Submission	Default Submission
Submission ID	22
Submitted by (CREDITOR)	M/s SHRIRAM FINANCE LIMITED
Debtor	M/s UNIMAC PLASTIC TECHNOLOGY PVT LTD
Default Amount	18196247.00
Status of Authentication by Debtor	DEEMED TO BE AUTHENTICATED
Authentication Completed on	16-07-2023 16:20:53

13. Further, it is seen that the 'default' which is arising in the present Application has happened much after the advent of Covid – 19 and the Corporate Debtor therefore cannot seek shelter under Section 10A of IBC, 2016.



14. The Financial Creditor in the Application has attached a summary of the loan in tabular form and the same is placed as Page No 127 of the Application typeset.

15. 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.

16. Further it has been consistently held by the Hon'ble Supreme Court in *Innoventive Industries Ltd. -Vs- ICICI Bank* and another [(2018) 1 SCC 407] as well as *Mobilox Innovations Pvt. Ltd.. -Vs- Kirusa Software Pvt. Ltd.* [(2018) 1 SCC 353] after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor as compared to the one filed under Section 9 by an Operational Creditor, that in relation to a Section 7 Application where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,00,000/-, this Tribunal is bound to admit the Application and as a



consequence trigger the Corporate Insolvency Resolution Process (CIRP) and in relation to a Section 7 Application defence of set off or counter claim put forth by the Corporate Debtor cannot be considered as a dispute in relation to the Financial debt and default in relation to it. In the present case, it is clear that there is a default on the part of the Corporate Debtor for a sum exceeding Rs.1 Crore.

17. For the aforesaid documents and case laws cited supra, this Tribunal orders to initiate Corporate Insolvency Resolution Process in respect of the Corporate Debtor viz, Unimac Plastic Technology Private Limited.

18. The Financial Creditor has proposed the name **Sathyadevi Alamuri** with *Registration Number: IBBI/IPA-002/IP-N00071/2017-18/10205*, (email- satyadevifcs@gmail.com) as the Interim Resolution Professional (IRP) who has also filed her 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 05.12.2023. We therefore appointed Ms. **Sathyadevi Alamuri** 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.

19. As a consequence of the Application being **admitted** in terms of Section 9 (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;

20. 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.

21. 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.

22. 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.



SAMEER KAKAR
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

Vinita Varshini. K

Order pronounced under Rule 151 of NCLT Rules 2016, by Hon'ble Judicial Member Sanjiv Jain on behalf of the Bench Comprising of Sanjiv Jain, Member (Judicial) and Sameer Kakar, Member (Technical).



(COURT OFFICER)