

NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH - I  
CHENNAI

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ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI  
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 08.01.2020

PRESENT: SHRI R VARADHARAJAN, MEMBER-JUDICIAL  
SHRI. ANIL KUMAR B, MEMBER (TECHNICAL)

APPLICATION NUMBER : IBA/1252/2019  
PETITION NUMBER :  
NAME OF THE PETITIONER(S) : SHRIRAM CITY UNION FINANCE LTD  
NAME OF THE RESPONDENTS : PREMIER DISTILLERIES PVT LTD  
UNDER SECTION : 7 RULE 4

| S.No. | NAME (IN CAPITAL) | DESIGNATION | SIGNATURE              |
|-------|-------------------|-------------|------------------------|
|       |                   |             | REPRESENTATION BY WHOM |

M. SRIDEVI  
Counsel for Financial Creditor  
Ph: 94444410083

M. L. S.  
8/1/2020

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

**IBA/1252/2019** 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 *M/s. Premier Distilleries Private Limited*

**M/s. Shriram City Union Finance Limited**

*... Financial Creditor*

-vs-

**M/s. Premier Distilleries Private Limited**

*... Corporate Debtor*

**Coram:**

**R. VARADHARAJAN,  
Member (Judicial)**

**ANIL KUMAR B,  
Member (Technical)**

*For Financial Creditor : M. Sridevi, Counsel*  
*For Corporate Debtor : Remained ex- parte*

**ORDER**

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

*Order pronounced on 8<sup>th</sup> of January, 2020*

1. This Application has been filed by **Shriram City Union Finance Limited** (hereinafter referred to as 'Financial Creditor') 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, against **M/s. Premier Distilleries Private Limited** (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) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. In compliance of the direction of this Authority dated 28.11.2019, the Learned Counsel for the Financial Creditor represents that the proof of dispatch in relation to the notice and the Track Delivery Report along with Affidavit have been filed on 08.01.2020. Perusal of the Affidavit along with Track Delivery Report shows that the

Corporate Debtor has been duly served with notice. It is also brought to the notice of this Authority by the Learned Counsel for the Financial Creditor that as per the earlier Affidavit of Service dated 26.09.2019 in relation to the service of Application, the Corporate Debtor has also been duly served with the Application. However, despite services effected twice on the Corporate Debtor, the Corporate Debtor had chosen not to appear before this Tribunal, and in the circumstance, we are constrained to set the Corporate Debtor *ex parte*.

Heard the Learned Counsel for the Financial Creditor and perused the documents filed by the Financial Creditor.

3. The Financial Creditor has claimed the total amount of Rs.1,54,95,474/- as outstanding against the Corporate Debtor as on 12.09.2019. Clause 2 of Part-IV of the Application discloses the details of the loan amount due to the Financial Creditor by the Corporate Debtor.

4. During the course of the submissions, the Learned Counsel for the Financial Creditor represents that this Application has been filed by the Applicant in the capacity of 'Financial Creditor' and that in relation to the Corporate Debtor, a sum of Rs.1,25,00,000/- was made available in view of the Loan Agreement dated 19.12.2017, copy of the Loan Agreement is enclosed at pages 144 to 150 of the typed set filed with the Application.

5. The Learned Counsel for the Financial Creditor further represents that the sum of Rs.1,25,00,000/- which was made available to the Corporate Debtor was required to be repaid together with interest by way of 60 equated monthly installments by the Corporate Debtor. However, the Corporate Debtor has made a few payments only, i.e., upto the installment falling due on May, 2019, and subsequently, from June, 2019 onwards, there has been a default in relation to the payment of the

instalments by the Corporate Debtor. In the said circumstance, notice of default dated 20.06.2019 was issued by the Financial Creditor to the Corporate Debtor which is enclosed at pages 151 to 154 of the typed set filed with the Application.

6. The Learned Counsel for the Financial Creditor has further pointed out that a sum of Rs.12,81,443/- as on 20.06.2019 was claimed as amount of default from the Corporate Debtor, and subsequent to the receipt of notice dated 20.06.2019, it is represented by the Learned Counsel for the Financial Creditor that a sum of Rs.10,35,750/- has been remitted by the Corporate Debtor toward the loan account, however, thereafter, no payments were made by the Corporate Debtor. In the circumstance, the present Application has been filed by the Financial Creditor claiming a sum of Rs.1,54,95,474/- after giving due credit to the said amount as paid by the Corporate Debtor.



7. In addition, the Learned Counsel for the Financial Creditor points out to Part III of the Application wherein one Mr. P. Sriram having Registration **No. IBBI/IPA-002/IP-N00292/2017-19/10895**, residing at No.10/17, Anandam Colony, South Canal Bank Road, Mandaveli, Chennai – 600 028, e-mail [srirampcs@gmail.com](mailto:srirampcs@gmail.com), has been proposed as Interim Resolution Professional (IRP) and further it is pointed out by the Learned Counsel for the Financial Creditor that the consent given by the proposed IRP in Form-2 under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has also been duly enclosed at pages 169 and 170 of the typed set filed with the Application.

8. Thus, taking into consideration the existence of a 'financial debt' as defined under Section 5 (8) of I&B Code, 2016 and 'default' on the part of the Corporate Debtor as defined under Section 3 (12) of the I&B Code, 2016 and as consistently held by Hon'ble Supreme Court

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both 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 where there is an existence of a 'financial debt' and its default in excess of Rs.1,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP), we are of the view that the Application as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

9. **P. Sriram**, having Registration Number No. IBBI /IPA-002 /IP-N00292 /2017-19/10895, as proposed by the Financial Creditor, is appointed as the IRP to 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 Sections 15,17,18 of the I&B Code, 2016 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 CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

10. As a consequence of the Application being admitted in terms of Section 7 of the I&B Code, 2016, 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 Corporate Debtor 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 Corporate Debtor any of its

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assets or any legal right or beneficial interest therein;

- (c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor 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 Corporate Debtor.”

11. 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

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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 such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.”

12. 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.”

13. Based on the above terms, the Application stands **admitted** in terms of Section 7 of the I&B Code, 2016 and the Moratorium shall come into 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 IRP above named be also furnished with copy of this order forthwith by the Registry.

-SD-  
**(ANIL KUMAR B)**  
MEMBER (TECHNICAL)

-SD-  
**(R.VARADHARAJAN)**  
MEMBER (JUDICIAL)