

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **28.06.2024** THROUGH VIDEO CONFERENCE

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Application No	:	
Petition No	:	CP(IB)/13(CHE)/2023
Name of Petitioner &	:	Sri Gurudev Enterprises and 4 Others Vs
Name of Respondent	:	Arjun Chemicals Pvt Ltd
Section	:	Sec 7 Rule 4 of IBC, 2016

ORDER

Present: Mr. Vikash, Ld. Counsel for Financial Creditor

Vide separate order pronounced in open Court, the petition is allowed. The Corporate Debtor viz., Arjun Chemicals Pvt Ltd is admitted into CIRP. Mr. S.Kannan is appointed as the IRP.

-sd-
[VENKATARAMAN SUBRAMANIAM]
MEMBER (TECHNICAL)

MS

**-sd-
[SANJIV JAIN]
MEMBER (JUDICIAL)**

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

CP/IB/13/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 **Arjun Chemicals Private Limited***

1. M/S. SRI GURUDEV ENTERPRISES

Represented by its Proprietor Mr. M. Akash Kumar
No.45/36, Strotten Muthia Mudali Street,
Chennai – 600 079

2. M/S. AMIT M JAIN HUF

Represented by its Karta: Mr. Amit M Jain
No.15, Vasu Street, Kilpauk,
Chennai – 600 010

3. VIKAS KUMAR

No.115, Rajendra Complex,
1st Floor, NSC Bose Road,
Sowcarpet, Chennai – 600 001

4. PRAGATI R JAIN

No.9 & 10, Vepery Church Road,
Siddharth Palace, Flat No. B-6,
Vepery, Chennai – 600 007

5. M/S. S.C. SHAH EXPORTS

Represented by its Proprietor:
Mr. Narendar Shah
No.315, Mint Street, Ekagaraharam,
Chennai – 600 003

...Applicants / Financial Creditors

-Vs-

ARJUN CHEMICALS PRIVATE LIMITED

Plot No.78 – 79, Phase – II, Sipcot

Indl Complex, Ranipet, Vellore,

Tamil Nadu – 632 403

...Respondent / Corporate Debtor

CORAM

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : Srenik Jain, Advocate

For Respondent : Rohan Rajasekaran, Advocate

Order Pronounced on 28th June 2024

ORDER

(Heard through hybrid mode)

This is an Application filed by **(i) M/s. Sri Gurudev Enterprises, (ii) M/s. Amit M Jain HUF, (iii) Vikas Kumar, (iv) Pragati R Jain, (v) M/s. S.C. Shah Exports** (hereinafter the “Financial Creditor”) against **ARJUN CHEMICALS 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 Applicants are Individual Creditors. In Part – II of the Application, it is stated that the Corporate Debtor was incorporated under the provisions of the Companies Act, 1956 on 22.11.1989 with CIN: U24119TN1989PTC018374 and the Registered office of the Corporate Debtor is situated at Plot No. 78 – 79, Phase – II Sipcot Indl Complex, Ranipet Vellore, Tamil Nadu – 632 403.

3. In Part III of the application, the Financial Creditor has proposed one Mr. S. Kannan with Registration No: IBBI/IPA-001/IP-P00755/2017-2018/11287 as the “Interim Resolution Professional” of the Corporate Debtor.

4. In Part-IV of the Application, It is stated that a total sum of Rs.4,09,68,350/- i.e. Rs.2,57,00,000 being the total principal amount and Rs.1,52,68,350/- towards interest at the rate of 18% per annum on the Principal amount calculated until 23.09.2022 is due. It is stated that the amount fell due from May 2019.

5. It is stated that the Corporate Debtor is into a business of Manufacture of Chemicals for pulp and paper industry. The Corporate

Debtor had taken a loan of Rs.1,00,00,000/- from the 1st Financial Creditor, Rs.1,40,00,000/- from the 2nd Financial Creditor, Rs.60,00,000/- from the 3rd Financial Creditor, Rs.60,00,000/- from the 4th Financial Creditor and Rs.1,00,00,000/- from the 5th Financial Creditor respectively at an aggregate rate of 18% per annum on 10.08.2018 and accordingly executed the promissory note and also issued postdated cheques and further issued a letter dated 10.08.2018 acknowledging the receipt of the larger loan amount out of which an aggregated sum of Rs.4,60,00,000/- was disbursed by the Financial Creditors in the manner as stated above.

6. It is stated that the Corporate Debtor agreed to repay the said amount along with interest at the rate of 18% per annum within a period of 20 months, however till date the Corporate Debtor by way of monthly installments to the respective Financial Creditors has managed to pay only part payments and it is needless to state that, the said payments were also made belatedly.

7. It is stated that all the respective Financial Creditors issued a Demand Notice dated 10.08.2022 calling upon the Corporate Debtor to pay the total outstanding amount and the said Demand Notice was duly

received and acknowledged by the Corporate Debtor on 13.08.2022. However, despite receipt of the same, the Corporate Debtor has not made any payments nor replied to the same.

8. It is stated that despite best efforts and repeated request, the Corporate Debtor has not come forward to make any payment, however the Corporate Debtor has been making gains at the costs of the Financial Creditors by prolonging the time endlessly and trying to take undue advantage of the given period. It is stated that as on date a sum of Rs.4,09,68,350/- is due and payable by the Corporate Debtor. Under such circumstances, the present Application has been filed by the Financial Creditor under Section 7 of IBC, 2016 seeking thereof to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

9. In relation to the Respondent, counter has been filed. During the course of hearing, the Learned Counsel for the Respondent stated that settlement talks are underway and they will file a settlement memo. On 09.05.2024, it was stated that the parties have entered into a settlement. A Memo to this effect was filed vide SR. No. 2081 dated 26.04.2024. Further,

it is stated that as per the settlement agreement dated 17.04.2024, the outstanding amount has to be paid on or before 15.06.2024.

10. When the matter came up for hearing on 21.06.2024, it was submitted that though a settlement agreement was entered into between the parties, but the Respondent has not complied with the same. Further, the Learned Counsel for the Respondent has admitted that default has been committed by the Corporate Debtor.

11. Thus, the debt and default on the Corporate Debtor are proved. The Financial Creditors had also sent the Demand Notice to the Corporate Debtor on 10.08.2022 and the same was received by the Corporate Debtor on 13.08.2022. The present Application has been filed before this Tribunal on 25.11.2022.

12. It has been consistently held by the Hon'ble Supreme Court in **Innoventive Industries Ltd. v. ICICI Bank and another** (2018) 1 SCC 407 as well as in **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.** (2018) 1 SCC 353 after going through the Scheme of IBC, 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 the 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.

13. Under the said circumstances, we are of the view that the present Application is required to be admitted in terms of Section 7(5)(a) of IBC, 2016. We therefore admit this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

14. The Financial Creditor has proposed the name of **S. Kannan** with *Registration Number: IBBI/IPA-001/IP-P00755/2017-2018/11287*, (email- charitarthkannan@gmail.com) as the Interim Resolution Professional (IRP) who has also filed 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 13.11.2024. We therefore appointed **S. Kannan** 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.

15. As a consequence of the Application being **admitted** in terms of Section 7(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;

16. 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.

17. 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.

18. 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 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.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond