

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

CP/637/IB/2018

Under Section 7 r/w Rule 4 of the IBC, 2016

In the matter of M/s. Baywatch Shelters Private Limited

M/s. L & T Finance Limited

---Financial Creditor

V/s

M/s. Baywatch Shelters Private Limited

---Corporate Debtor

Order delivered on: 20.03.2019

Coram:

B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Financial Creditor: *Mr. Gaurav Chatterjee, Advocate*
Mr. J.R Jayant, Advocate
M.G. Pranava Charan, Advocate

For the Corporate Debtor : *Mr. Pushkar Sood, Advocate*
Mr. Pawan Jhabakh, Advocate

ORDER

Per: B. S.V. PRAKASH KUMAR, MEMBER (JUDICIAL)

Order pronounced on: 20.03.2019

It is a Company Petition filed by the Financial Creditor ("the Creditor") u/s 7 of the Insolvency & Bankruptcy Code, 2016 ("the Code") stating that the Corporate Debtor ("the Debtor") defaulted in

repaying loan amount of ₹7,90,71,611 as on 06.03.2018, henceforth sought for initiation of Corporate Insolvency Resolution Process (CIRP) against the Debtor.

2. It is the case of the Creditor that the Debtor had entered into a Loan Agreement dated 08.10.2014 with the creditor for a sum of ₹5,50,00,000, in pursuance thereof, the Creditor disbursed this loan amount from three separate accounts – 6240019990 [1 Crore], 6240020064 [2.75 Crores] and 6240020949 [1.75 Crores] to the Debtor at the rate of 14% interest per annum. Accordingly, the Creditor disbursed the amounts on 03.11.2014, 15.12.2014 and 31.10.2014 respectively. For grant of this loan, the Debtor executed a Loan Agreement, Memorandum of Title Deeds dated 17.10.2014 in favour of the Financial Creditor comprising of 44.10 acres and 2.5 cents. That apart, Form-8 was filed with RoC reflecting the charge created by the Debtor in favour of the Financial Creditor. In addition to the aforesaid documents, Mr. K. Ilango and Mr. Thivagaran have each pledged 5000 shares of the Debtor in favour of the Creditor vide Pledge Agreement dated 09.10.2014. Apart from the documents aforementioned, the

Creditor has filed Share Transfer Form, Power of Attorney for share Pledge dated 08.10.2014, Audit Report of the Debtor for the year 2014-15, Letter from the Debtor requesting for settlement dated 04.07.2016, Reply from the Financial Creditor dated 21.07.2016, Bank Certificate evidencing non-receipt of the amount from the Debtor. As per the schedule of the Loan Agreement, the Debtor was bound to repay by way of EMI, but the Debtor defaulted in making repayment of the principle and the interest since 31.05.2016. It is further stated that the Debtor has so far paid only ₹97,69,317. The Creditor says that the Debtor has failed to repay neither the principal amount nor the interest amount till date since 31.05.2016. As no repayment has come since 31.05.2016, this Creditor has initiated this proceeding on 24.04.2018 for initiation of CIRP against the Debtor. The Creditor has given details of the assets over which charge has been created and has also filed Certificate of Registration of charges issued by the Registrar. This Creditor to prove that the liabilities being reflected in the records of the Debtor, it has filed the Balance Sheet and Notes thereof reflecting this liability in the records of the Debtor. In addition to it, it

has also filed the Statement of Account disclosing the part payments made by the Debtor till 31.05.2016.

3. For there being no defence from the Debtor side, since this Bench having found the material furnishing the existence of debt and default against the Debtor, we are of the view that this petition is fit for admission, therefore, for the Creditor have filed Consent Form of the proposed Resolution Professional, we admit this petition with the directions as follows:

I. That Moratorium is hereby declared prohibiting all of the following actions, namely,

- 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 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.

II. That Supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

III. That the provisions of sub-section (1) of Section 14 of IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

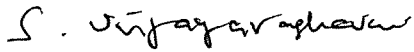
IV. That the order of moratorium shall have effect from 20.03.2019 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of IBC or passes an order for liquidation of corporate debtor under section 33 of IBC, as the case may be.

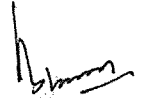
V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of IBC.

VI. That this Bench hereby appoints Mr. Dhiren Shantilal Shah
Reg.No: [IBBI/IPA-001/IP-P00220/2017-18/10419], B-102,
Bhagirathi Niwas, Near Natraj Studio, Sir M.V Road, Andheri-

East, Mumbai-600069, E-Mail: dss@dsshah.in, as Interim Resolution Professional to carry out the functions as mentioned under IBC. Fee payable to IRP/RP shall be in compliance with the IBBI Regulations/Circulars/Directions issued in this regard.

4. Accordingly, this Petition is **admitted**.
5. The Registry is hereby directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by way of email or whatsapp.


(S. VIJAYARAGHAVAN)
MEMBER (Technical)


(B. S.V. PRAKASH KUMAR)
MEMBER (Judicial)

TJS/VS