

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

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **31.05.2024** THROUGH VIDEO CONFERENCING

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

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/159(CHE)/2023
NAME OF THE PETITIONER(S) : Shriram Transport Finance Company Ltd.
NAME OF THE RESPONDENT(S) : Parveen Travels Pvt. Ltd.
UNDER SECTION : Sec 7 Rule 4 of IBC, 2016

ORDER

Present: Shri. P. Elayaraj Kumar, Ld. Counsel for the Petitioner.
Ms. Deepa Mariappan, Ld. Counsel for the Respondent.

Vide separate order pronounced in Open Court, the petition is allowed. The Corporate Debtor M/s. Parveen Travels Pvt. Ltd. is admitted into CIRP. Shri. Madurai Sundaram. Shankar is appointed as Interim Resolution Professional.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

vs

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

CP/IB/159/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 M/s. Parveen Travels Private Limited

M/s. SHRIRAM FINANCE LIMITED,

(Formerly Known as Shriram Transport Finance Company Ltd.)

Rep. by its Power of Attorney, Mr. M. Sakthivel

Registered Office at 14A, South Phase,

Industrial Estate, Guindy, Chennai – 600 032

... *Financial Creditor / Applicant*

-Vs-

M/s. PARVEEN TRAVELS PRIVATE LIMITED

148, Perambur Barracks Road,

Purasaiwalkam, Chennai – 600 007

Also at

102, Permabur Barracks Road, Choolai,

Chennai – 600 007

... *Corporate Debtor / Respondent*

Present:

For Applicant : *P. Elayaraj Kumar, Advocate*

For Respondent : *B. Dhanaraj, Advocate*

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

Order Pronounced on 31st May 2024

ORDER

(Heard through hybrid mode)

This petition under Section 7 read with Rule 4 of Insolvency and

Bankruptcy (Application to Adjudicating Authority) Rules, 2016) (“**the**

Code”) has been filed by **M/s. Shriram Finance Limited** in the capacity of Financial Creditor against the Respondent/Corporate Debtor **M/s. Parveen Travels Private Limited** for initiating Corporate Insolvency Resolution Process (“CIRP”).

2. In Part-I of the application, the Applicant has given his particulars and address of its Registered Office i.e. No. 14A, South Phase, Industrial Estate, Guindy, Chennai-600 032. Part-II of the application contains the details of the Corporate Debtor. It was incorporated on 13.06.2000 with Authorized Share Capital of Rs.12,00,00,000/- (Rupees Twelve Crores only) and Paid-Up Capital of Rs.9,58,52,800/- (Rupees Nine Crore Fifty Eight Lakhs Fifty Two Thousand and Eight Hundred only) having Registered office at Chennai within the jurisdiction of this Tribunal.

3. In Part – III of the Application, the Applicant has proposed the name of one Mr. Madurai Sundaram Sankar as the Interim Resolution Professional.

4. In Part-IV, the Applicant has disclosed the total amount of debt as Rs.66,19,72,538.62/- (Rupees Sixty Six Crore Nineteen Lakhs seventy two thousand five hundred thirty eight and sixty two paise only) and date

of default as 19.02.2023 and 09.03.2023, i.e. the date on which the Loan Recall notice was issued by the Financial Creditor. In Part-V, the Applicant has given the details of the documents including list of moveable and immovable assets, Loan account statement etc.

5. The Applicant has also filed the record of financial information in Form-D issued by NESL as Annexure – 1(33V) which shows the status of authentication as “Deemed to be authenticated”.

6. It is stated that the Corporate Debtor had approached the Financial Creditor in the year 2015 seeking Financial Assistance for its business purpose. Considering the request, the Financial Creditor sanctioned Financial Assistance in the form of Vehicle Loan Facilities and Term Loans in favour of the Corporate Debtor. In consideration thereof and to secure the same, the Corporate Debtor executed necessary loan documents. That apart, Mr. A. Aslam, Mr. A. Afzal, Mr. A. Aariff and Mr. A. Sadiq being the directors of the Corporate Debtor also stood as the Guarantors in their Individual Capacity by executing Letter of Guarantee. Further, they also created Mortgage over the immovable property by executing a Memorandum of Deposit of Title Deeds dated

23.12.2015 and the same was registered as Doc.No.4849 of 2015 on the file of SRO Sungavarchatiram.

7. It is stated that the aforesaid Financial Assistance were periodically restructured on the request of the Corporate Debtor. In continuation of enjoying the aforesaid Financial Assistance, the Corporate Debtor approached the Financial Creditor in the year 2021 seeking Financial Assistance by submitting 97 Loan Applications dated 13.09.2021, seeking purchase of Vehicles under Vehicle loan facilities, respectively. Further the Corporate Debtor also sought for Two Term Loans by submitting two loan applications dated 05.10.2021. Considering their request, the Financial Creditor sanctioned Ninety Seven vehicle loans and Two Term loans to the Corporate Debtor. The details of the same are given in Part – IV of the Application. It is stated that in consideration thereof and to secure the same, the Corporate Debtor executed necessary loan documents in favour of the Financial Creditor.

8. It is stated that for the Financial Assistance availed by the Corporate Debtor, the Guarantors extended the Mortgage in the month

of September 2021 over the immovable properties, thereby extending the mortgage which was created by executing the memorandum of Title Deeds dated 23.12.2015 executed by them in favour of the financial Creditor, which was registered as document No. 4849 of 2015 on the file of SRO, Sunguvarchatram.

9. It is stated that the vehicle Loans and the Term Loans availed by the Corporate Debtor, were agreed to be repaid in the respective Equated Monthly Instalments (EMI). The Corporate Debtor agreed to pay interest at the rate of 12.5% per annum or at such other higher rate as may be notified by the Financial Creditor from time to time.

10. It is alleged that after availing the Vehicle Loans and the Term Loans, the Corporate Debtor has not come forward to repay the same as agreed upon. On account of the Commission of default in payment of the EMI, the account of the Corporate Debtor with the Financial Creditor became Non- Performing Assets on 19.08.2022. Hence, the Financial Creditor recalled the loans by issuing a legal notice on 19.02.2023 in respect of Terms Loans and in respect of Vehicle Loans on 09.03.2023.

REPLY OF THE CORPORATE DEBTOR

11. It is stated that that the Respondent availed the Vehicle loans and Business Term Loan from the Financial Creditor during various periods between FY 15-16 to FY 20-21. For each vehicle, a separate contract was signed and separate loan agreement and hypothecation agreement were executed. The loans were to be paid in EMI (principal interest) with interest calculated 12.5% as mentioned in the contract.

12. It is stated that during the fiscal year 2018-2019, the Corporate Debtor significantly expanded its fleet by acquiring a substantial number of buses to meet the demands of corporate clients like Hyundai, TCS, and VIT, while also enhancing its intercity passenger transport division. However, challenges arose as repayments became due even before the newly acquired vehicles could be operational, given a limited moratorium period granted by lenders. The situation worsened during the second half of 2019 due to the drastic reduction in tourist arrivals caused by the global COVID-19 pandemic.

13. It is stated that subsequent lockdowns, extended work-from-home policies for the IT industry, and closure of colleges led to the

invocation of force majeure clauses by institutions serviced by Corporate Debtor buses. As a result, the transport division came to a standstill for over 24 months, causing a severe drop in revenue from Rs.385 crores in FY 2019-2020 to Rs. 180 crores in FY 20-21.

14. It is stated that despite these financial setbacks, the Corporate Debtor was compelled to maintain its staff and labour strength, as many employees (1300) had longstanding associations with the company and depended on it for their livelihoods. It is stated that the Corporate Debtor pays huge amount as GST, IT, Road Tax, PF, ESI, etc and the amount paid during the last three years exceeds Rs.100 Crores.

15. It is stated that the Respondent in good faith, has been diligently repaying the loans despite facing unprecedented challenges triggered by the COVID-19 pandemic. The significant reduction in revenue, attributed to external factors beyond Respondent's control, has resulted in a substantial decline in its financial health. The Respondent, however, has made genuine efforts to manage its liabilities as evident from the reduction in outstanding loans by Rs.1.63 Crores through the closure of 22 contracts between April 2023 and August 2023.

16. It is stated that the Respondent vehemently contests the arbitrary actions taken by Applicant, such as the forcible possession of vehicles beyond all legal means. It is stated that the actions of the Applicant are clearly a contravention of the procedure established. It is trite law that repossession cannot go beyond the Fair Practices Code on Lender's Liability as provided by Reserve Bank of India. Recall / Repayment of loan should be with proper notice and only after expiry of the period of such notice, further steps should be initiated for recovery. This fair practice code does not warrant or promote, the Applicant's arbitrary action to disengage the business operation of the Respondent by taking possession of the vehicles hypothecated. It is stated that such arbitrary actions of the Applicant caused unwarranted damage to the goodwill and reputation of the Respondent. The brand image of the Respondent built over fifty years has been adversely remarked due to the arbitrary actions of the Applicant. It is stated that the Respondent has lost business contracts due to such arbitrary action which consequently led to the Respondent to lose revenue gradually.

17. It is stated that the Applicant has not indulged the mandates provided by RBI at the first instance, it is trite law that, NBFCs are

mandated to provide borrowers with a copy of these terms and conditions, along with all enclosures quoted in the loan agreement, at the time of loan sanction/disbursement, as part of a commitment to transparency and borrower awareness. However, the information provided to the Respondent is absent about a legally enforceable repossession clause. Further Article 14 of the hypothecation cum loan agreement signed between the Respondent and the Applicant herein is unclear and does not provide the Applicant any right for initiating any arbitrary action against the Respondent.

18. It is stated that the Corporate Debtor is a bonafide borrower and is ready and willing to repay the debts, due to Corporate Debtor facing financial challenges. It approached the Financial Creditor for the restructuring of its liability. The acknowledgment of an insufficient cash surplus to cover repayments reflects the financial strain experienced by Corporate Debtor. Despite this, Corporate Debtor demonstrated its commitment by repaying a substantial amount of Rs. 80.76 Crores as Equated Monthly Installments (EMI), encompassing both principal and interest.

19. It is stated the Corporate Debtor engaged reputable auditors, to explore debt restructuring and settlement options, demonstrating its commitment to resolving the financial issues. It is stated that the Corporate Debtor seeks a fair and just resolution that considers the extraordinary circumstances it faced, aiming to restore financial stability and protect its longstanding reputation in the market.

20. It is stated that the financial difficulties of the Corporate Debtor do not warrant the misutilization of Section 7 of the IBC Code as a tool for recovery. It is imperative to recognize that the provisions under the IBC Code are not intended to be employed as a means of enforcing recovery but rather as a mechanism for the resolution of insolvency issues in a fair and transparent manner. It is stated that the Respondent remains a going concern and continues to contribute significantly to the passenger transportation sector, providing employment opportunities and fulfilling its obligations to various stakeholders. Pushing the Corporate Debtor to CIRP now would largely prejudice the interest of those employed by the Corporate Debtor and all the stakeholder's fulfilling its various obligations to stakeholders.

21. It is stated that it is a trite law that Adjudicating Authority may in its discretion not admit the application of the Applicant filed under Section 7 of IBC, 2016. It is stated that the Corporate Debtor had acted in good faith and irreparable injury would be caused to the Corporate Debtor if the prayers sought are allowed and as such sought dismissal of the present Petition.

22. We have heard Learned Counsel for the parties and perused the record.

23. It is seen from the record of proceedings dated 09.02.2024, that the Corporate had submitted a OTS proposal to the Financial Creditor, to which the Financial Creditor after taking instructions submitted that the OTS proposal is not acceptable. Thereafter on 09.04.2024, the Corporate Debtor sent an email with a covering letter attaching two demand draft dated 05.04.2024 one for a sum of Rs.1 Crore and another for Rs.3 Crore as part payment against the OTS amount of Rs.38.50 Crore as against the outstanding due of Rs.74.68 Crore. It is seen from the memo filed by the Financial Creditor that on 17.04.2024 by an email, the Financial Creditor rejected the OTS proposal of the Corporate Debtor.

24. In the present Application, the Financial Creditor has claimed a sum of Rs.66,19,72,538.62/- (Rupees Sixty Six Crore Nineteen Lakhs seventy two thousand five hundred thirty eight and sixty two paise only). The date of default are 19.02.2023 and 09.03.2023 i.e. the date on which the Loan Recall notice was issued by the Financial Creditor. The Corporate Debtor in reply has raised issues in relation to the arbitrary actions taken by Applicant, such as the forcible possession of vehicles. It is imperative to note here that the Adjudicating Authority is not empowered under the provisions of IBC, 2016 to make enquiry in relation to the alleged arbitrary actions of the Financial Creditor in taking forcible possession of the vehicles. The Corporate Debtor has to approach the appropriate forum seeking legal remedy as against such arbitrary action of the Financial Creditor and it cannot agitate the said issue before the Adjudicating Authority.

25. Be that as it may, the fact remains that the Corporate Debtor was unable to service its loan and as such the Financial Creditor has proved that there is a 'financial debt' and consequent 'default' committed on the part of the Corporate Debtor. Further, it is pertinent to note that the said

default does not fall under the period stipulated under Section 10A of IBC, 2016.

26. In this connection, we find it apt to refer to the Judgment of the Hon'ble Supreme Court in the matter of *Innoventive Industries Limited v. ICICI Bank Limited*, 2018 1 SCC 407 which is as follows;

27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the

adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.

27. Thus, the moment the Corporate Debtor has committed default in repayment of the ‘financial debt’ and the due is more than Rs.1 Crore then the Code gets triggered and it is of no matter that the debt is disputed so long the debt is “due” and payable.

28. Further, the Record of Default from the 'Information Utility' which was authenticated on 31.01.2023 shows the Status of Authentication as "**Deemed to be authenticated**". Thus, in all respects the Application filed by the Financial Creditor is complete and as such in terms of Section 7(5) of IBC, 2016 the present Application filed by the Financial Creditor is required to be admitted. We therefore **admit** this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

29. The Financial Creditor has proposed the name of **Mr. Madurai Sundaram Sankar**, having **Reg. No. IBBI/IPA-001/IP-P00770/2017-2018/11315**; Email ID: m.s.sankar@outlook.com as the Interim Resolution Professional ("IRP") who has also filed his consent in Form – 2 and also upon verification from the IBBI website, it is seen that the said person hold valid Authorization for Assignment till 07.12.2024. **Mr. Madurai Sundaram Sankar** is appointed as the IRP and is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of

this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

30. As a consequence of the Application being admitted in terms of Section 7 of the Code, 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 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;

31. 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 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.

32. 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.

33. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

34. 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 IBC, 2016 and file his report within 30 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.

35. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

36. The IRP shall take custody of the records of information relating to the assets, finances and operations of the Corporate Debtor referred in clause (a) of section 18 and such other information required under regulation 36; and also the assets recorded in the balance sheet of the Corporate Debtor or in any other records referred in clause (f) of section 18 of IBC, 2016 and the personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall provide to the IRP, the list of assets in terms of Regulation 3A of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016.

37. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter

VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

38. Based on the above terms, the Petition stands admitted in terms of Section 7 of the Code 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 Interim Resolution Professional above named shall also be furnished with copy of this Order forthwith by the Registry, who will communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

39. Accordingly, CP/IB/159/CHE/2023 stands **admitted**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Raymond