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

CP/IB/127/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. MVR SHIPPING SERVICES PVT LTD***

M/s. SHRIRAM FINANCE LIMITED,
(Formerly known as Shriram Transport Finance Company Limited)
Rep. by its Power of Attorney Holder Mr. V.Velu,
Registered office at Mookambika Complex,
3rd Floor, No.4, Lady Desika Road,
Mylapore, Chennai – 600 004. *... Financial Creditor*

-Vs-

M/s. MVR SHIPPING SERVICES PVT. LTD,
Registered office at No.3,
Jaffer Syrang Street,
Parrys, Chennai – 600 001. *... Corporate Debtor*

Order Pronounced on 22nd November, 2023

CORAM :

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

For Financial Creditor : Mr. P.Elayarajkumar, Advocate for M/s. Ramalingam & Associates

For Corporate Debtor : Mr. V.V.Sivakumar, Advocate

ORDER

(Heard through video conferencing)

1. **M/s. SHRIRAM FINANCE LIMITED**, Applicant / Financial Creditor herein has filed an Application under Section 7 of IBC, 2016, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **M/s. MVR Shipping Services Pvt. Ltd**, Respondent / Corporate Debtor herein.

2. In part-I of the Application, it is stated that M/s. Shriram Finance Limited was incorporated on 13.06.1979 having CIN No. L65191TN1979PLC007874 and registered office at Mookambika Complex, 3rd Floor, No.4, Lady Desika Road, Mylapore, Chennai – 600 004. Part-II contains the particulars of the Corporate Debtor M/s. MVR Shipping Services Pvt. Ltd, having CIN No. U63090TN1991PTC021039 and registered office at No.3, Jaffer Syrang Street, Parrys, Chennai – 600 001. It was incorporated on 28.06.1991 with the authorized capital of Rs.10 lakhs.

3. Part-IV contains the particulars of the financial debt. It is alleged that the Applicant is a Non-Banking Finance Company. The Applicant/Financial Creditor was approached by the Corporate Debtor in the year 2019 for a financial assistance by submitting a loan application. It considered the request and sanctioned the loans to the Corporate Debtor for seven vehicles as detailed in part-IV of the application. The Corporate Debtor executed the agreement. It is alleged that after paying few installments, the Corporate Debtor defaulted which made the Financial Creditor recall the loan by issuing a legal notice on 01.12.2022 to the Corporate Debtor. It is stated that a sum of Rs.2,46,99,580.73 became due and payable by the Corporate Debtor upto 04.02.2023. A statement to this effect has been enclosed by the Applicant. It is stated that the loan carried an interest at the rate of 17% per annum and was payable in 60/48 installments. In consideration thereof, the Corporate Debtor had signed the seven Demand Promissory Notes and Hypothecation cum Loan Agreements. The Applicant had given details of all the vehicles,

statement of accounts to submit that the Application is within limitation and fulfills the requisites as provided under Section 7 of the IBC, 2016. The Applicant has also filed the Record of Default (RoD) Form-D showing the debt and default in respect of each of the vehicles.

4. On getting notice of the Application, the Respondent/Corporate Debtor filed the reply alleging that the claim made by the Applicant in relation to the alleged debt is barred by limitation. A table setting out the details of the impugned loan has been submitted by the Respondent alleging that the date of default as per Part-IV of the Application is 21.02.2020 and thus the limitation period expired on 20.02.2023. However the present application has been filed on 19.05.2023. It is alleged that the loan transactions between the Financial Creditor and the Corporate Debtor are not a part of series of transaction or one composite transaction. The parties had executed separate Demand Promissory Note and Loan Agreements for each of the seven loan accounts and the same is evident from the documents annexed with the application. Separate loan accounts / ledgers maintained by the Financial Creditor for each of the loan accounts clearly reflect that the loan transaction is not of a composite nature. It is alleged that only in order to satisfy the minimum threshold of Rs.1 crore, the Applicant has clubbed all the separate accounts and distinct loan accounts for the purpose of present proceedings.

5. We have heard Ld. Counsel for the Financial Creditor and Corporate Debtor and perused the records.

6. It is not in dispute that the Corporate Debtor had availed the loan facility from the Financial Creditor in respect of seven vehicles as detailed in the Application and executed the Demand Promissory Notes and Hypothecation cum Loan Agreements. It is also not in dispute that the Respondent/Corporate Debtor failed to pay the timely installments of the loan, which made the Applicant recall the loan by issuing a legal notice on 01.12.2022 to the Respondent/Corporate Debtor. The notice was duly served upon the Respondent/Corporate Debtor, but despite that the Corporate Debtor did not make the payment. The documents show that the loan was availed on 10.01.2019 on which date, the Corporate Debtor signed the loan agreements. The loan account was declared as NPA on 21.05.2020. Admittedly, consolidated application has been filed in respect of all the seven loans, but it cannot be said that the Applicant clubbed all the separate and distinct loan accounts to satisfy the minimum threshold of Rs.1 crore.

7. Section 7 of IBC, 2016 clearly provides that a Financial Creditor either by itself or jointly with other Financial Creditors or any other person on behalf of the Financial Creditor, may file an application for initiating CIRP against the Corporate Debtor before the Adjudicating Authority when a default has occurred. In the instant case, the Financial Creditor along with the Application has furnished the Record of Default recorded with the Information

Utility, which clearly shows that there was debt and default on the part of the Corporate Debtor. Financial debt has been defined under Section 5(8) of IBC, 2016 i.e., it means a debt along with interest, if any, which is disbursed against the consideration for the time value of money. Loan agreement clearly shows that the debt carries an interest @ 17% per annum and it was disbursed against the consideration for the time value of money. Debt is defined under Section 3 (11) of IBC, 2016. It means liability or obligation in respect of a claim which is due from any person and includes a financial debt. Default as defined under Section 3(12) of IBC, 2016, means non-payment of debt when whole or any part or installments of the amount of debt has become due and payable and is not paid by the debtor or the Corporate Debtor. That being the position, we find that the Application in the present form is maintainable.

8. Now coming to the limitation, admittedly the loan was disbursed on 10.01.2019. It was declared as NPA on 21.05.2020. The legal notice was sent on 01.12.2022 after recalling the loan, the Application has been filed on 19.05.2023, but the statement of accounts filed with the Application clearly show that the Corporate Debtor even after the account was declared as NPA made the payments of installments in the year 2021 and 2022 respectively, thus, acknowledging the debt within the period of limitation as provided under Section 18 of the Limitation Act. Even otherwise, the Applicant is also entitled to the benefit as provided by the order of Hon'ble Supreme Court in suo-moto Writ Petition 3(2020) extending the period of limitation.

9. We are of the view that the present is a clear case of debt and default on the part of the Corporate Debtor. The Application filed by the Financial Creditor is within limitation. No plausible defense has been raised by the Corporate Debtor as to why the CIRP be not initiated against the Corporate Debtor.

10. Taking into consideration all the facts and circumstances, we **admit** the Application and order for initiation of CIRP against the Corporate Debtor viz., M/s. MVR SHIPPING SERVICES PVT LTD.

11. The Financial Creditor has proposed the name of **Ms. Satyadevi Alamuri,** having Reg. No. IBBI/IPA-002/IP-N00071/2017-18/10205 as the Interim Resolution Professional (IRP) who has also filed her consent in Form – 2 at page No.318 of the application and also upon verification from the IBBI website, it is seen that the said person holds valid Authorization for Assignment till 15.12.2023. **Ms. Satyadevi Alamuri** is appointed as 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.

12. 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;

13. 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 mange 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.

14. 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:
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> 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. Accordingly, **CP/IB/127/CHE/2023** stands **admitted**.

-Sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-Sd-

SANJIV JAIN
MEMBER (JUDICIAL)