(7)

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

CP(IB)/101(CHE)/2023

Along with

IA(IBC)/1860(CHE)/2023 in CP(IB)/101(CHE)/2023

In the matter of ***Emirates Shipping Agencies (India) Pvt Ltd***

Emirates Shipping Agencies (India) Pvt. Ltd
Registered address
Nagpal Business Tower, A-91,
Okhla Industrial Area, Phase-II,
New Delhi - 110020

... Petitioner/Financial Creditor

-Vs-

Genshipping Pacific Line (India) Pvt Ltd,
Registered address
No.5, Old No.3, Smith Lane,
Anna Salai, Chennai - 60002

... Respondent/Corporate Debtor

Order pronounced on ***15th November 2023***

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Applicant : *Kairav Anil Trivedi, PCS*
For Respondent : *None appeared*

ORDER

This Company Petition has been filed by Emirates Shipping Agencies (India) Pvt. Ltd (hereinafter referred as *Financial Creditor*) against the Genshipping Pacific Line (India) Pvt. Ltd (hereinafter referred as *Corporate Debtor*) seeking to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.

2. Part – I of the Application sets out the details of the Financial Creditor. It is stated that the Financial Creditor is a Company incorporated under the provisions of the Companies Act 1956.

3. In Part – II of the Application it is stated that the Corporate Debtor is a Private Limited Company incorporated under the provisions of the Companies Act 2013 on 10.04.2015, and registered office address of the Corporate Debtor is situated at No.5, Old No.3, Smith Lane, Anna Salai, Chennai 600002.

4. In Part – III of the Application it is stated that the Financial Creditor has proposed the name of Mr. Chandramouli Ramasubramaniam as the Insolvency Resolution Professional.

5. In Part – IV of the Application the Financial Creditor has claimed total sum of Rs.4,30,16,486.97/- which includes a principal amount of Rs.2,58,00,000/- and interest amount of Rs.1,72,16,486.97/-.

6. It is stated that the Financial Creditor had disbursed a term loan of Rs.6.5o crores to the Corporate Debtor based upon loan agreement dated 18.11.2015. The said loan is required to be paid within a period of two years.

7. It is stated that before the expiry of the first loan agreement, the Corporate Debtor made a request vide letter dated 11.10.2016 to the Financial Creditor to grant further period of two years by closing the earlier loan and also by advancing a fresh loan. It is stated that all other terms and conditions remained the same.

8. It is stated that in pursuance of the same, an amendment to the loan agreement was signed on 31.10.2016 wherein a further period of one year was granted to the Corporate Debtor to repay the said loan amount and the outstanding loan amount was converted into equated monthly installments.

9. It is stated that the said loan amount is also reflected in the books of the Corporate Debtor *(the copy of the audited balance sheet of the Corporate Debtor is attached along with the Application).* It is stated that only few installments term loan have been repaid by the Corporate Debtor. Since the Corporate Debtor has not repaid the loan as per the agreed terms, Financial Creditor sent a notice to the Corporate Debtor and also to its directors.

10. It is stated that the director of the Corporate Debtor replied to the notice stating that he has resigned from the office of the directorship and he is not involved in the management of the Corporate Debtor since 18.07.2020. Apart from that, an objection was raised that the said amount is not outstanding due and payable by the Corporate Debtor.

11. It is stated that the holding Company of the Corporate Debtor is situated at Singapore and is currently under liquidation and as per the records of the Ministry of Corporate Affairs, all the directors of the Corporate Debtor have resigned and the demand notice was also returned as undelivered.

12. It is also stated that the Financial Creditor has filed the report from NeSL dated 24.05.2022 and a perusal of the same would manifest fact that debt status is shown as *'deemed to be authenticated'*.

13. Notice of this Application was issued by this Tribunal to the Corporate Debtor, however, the same was returned as undelivered. Thereafter this Tribunal vide order dated 03.08.2023, directed the Financial Creditor to cause a paper publication in Business Standard (English) and Makkal Kural (Tamil). Accordingly paper publication was made. The Financial Creditor also filed affidavit of service in this regard. Inspite of the same, there is no representation on behalf of the Corporate Debtor. Thus, sufficient notice was given to the Corporate Debtor. In the said circumstances we are constrained to proceed in the matter the absence of the Corporate Debtor.

14. We have heard the submissions made by the Learned Counsel for the Financial Creditor and perused the documents.

15. Upon perusal of the Balance Sheet of the Corporate Debtor which is annexed along with the Application, at page No. 94 in the notes to the

financial statements for the Financial Year 2018 – 2019, it is seen that the Corporate Debtor has acknowledged that it has taken a Working capital term loan from Emirates Shipping Agencies (India) Private Limited i.e. the Corporate Debtor. The loan was repayable by 31.10.2018, however the repayment of loan was extended by the lender till 31.10.2019 vide extension letter dated 25.10.2019 and the interest payable is @ 9.5% p.a.

16. Thus, the said acknowledgment of the Corporate Debtor in its balance sheet proves that there is a 'financial debt' and the Corporate Debtor has committed 'default' in repayment of such financial debt. Under the said circumstances, we are of the view that this Application filed by the Financial Creditor is required to be admitted under Section 7(5) of IBC, 2016. We therefore admit this application and order for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

17. The Financial Creditor, eventhough proposed the name of one Mr. C. Ramasubramaniam, however filed IA(IBA)1860(CHE)/2023 before this Tribunal in which it is stated that the said IBBI has suspended the license of Mr. C. Ramasubramaniam. It has now proposed the name of one Mr. S.

Kangayan with Reg. No. IBBI/IPA-002/IP-N00866/2019–2020/12770 email *(kangayan.s@gmail.com)* as the Interim Resolution Professional. The Authorization for Assignment is valid upto 15.10.2024. The said Interim Resolution Professional (IRP) has also filed his written consent prescribed under Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. We accordingly appoint Mr. S. Kangayan as the IRP who 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 CIR Process in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

18. 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;

19. 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.
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> (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.
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> (3) The provisions of sub-section (1) shall not apply to
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> (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;
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> (b) a surety in a contract of guarantee to a corporate debtor.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. Accordingly, IA(IBC)/1860(CHE)/2023 stands **disposed of** and CP(IB)/101(CHE)/2023 stands **admitted**.

- Sd -

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

- Sd -

SANJIV JAIN
MEMBER (JUDICIAL)