

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 12/07/2017 AT 10.30 AM

PRESENT: SHRI CH. MOHD SHARIEF TARIQ, MEMBER - JUDICIAL
SHRI S. VIJAYARAGHAVAN, MEMBER - TECHNICAL

APPLICATION NUMBER :
PETITION NUMBER : TCP/319/ (IB)/2017
NAME OF THE PETITIONER(S) : IFFCO TOKIO GENERAL INSURANCE CO. LTD
NAME OF THE RESPONDENT(S) : SKC RETAIL LTD
UNDER SECTION : 433 (e)(f)

S.No. NAME (IN CAPITAL) DESIGNATION SIGNATURE
REPRESENTATION BY WHOM

D) Mr. R. Senthilkumar
for Dua Associates

Counsel for Petitioner

Senthil Kumar

(Three large green diagonal lines, likely representing redactions or placeholders)

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI

TCP/319(IB)/2017

Under section 7 of the Companies Act, 2013

In the matter of

M/s.IFFCO TOKIO General Insurance Co. Ltd.

Vs

M/s.SKC Retail Ltd.

Order delivered on 12th July 2017

CORAM


CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S.VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Applicant : Mr.R.Senthilkumar, Advocate for Dua Associates

ORDER


CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under adjudication is the company petition C.P.403 of 2014 that came to be filed under Section 433(e)&(f) of the Companies Act, 1956 before the Hon'ble High Court of Madras and stood transferred to this Bench and renumbered as TCP/319(IB)/2017. The application has been filed by M/s.IFFCO TOKIO General Insurance Company Ltd. (hereinafter referred to as "Financial Creditor") against M/s. SKC Retail Ltd (hereinafter referred to as "Corporate Debtor").

2. As per the directions given by this Bench vide order 12.06.2017, notice has been served on the Corporate Debtor on 14.06.2017. In the notice, it has been mentioned that the next date of hearing is fixed on 

12.07.2017. The postal receipt and track delivery report are placed on record as proof of service on the Corporate Debtor along with an affidavit. In spite of the same, the Corporate Debtor chose not to appear in the matter. The non-appearance is deliberate and wilful. The service on the Respondent is held sufficient. Therefore, the Respondent is set *ex parte*.

3. The Financial Creditor submits that M/s.SBI Factors and Commercial Services Private Ltd. offered trade finance facilities to the respondent Corporate Debtor sanctioning a purchase bill factoring facility to the extent of Rs.20 crores. A Purchase Bill Factoring Agreement dated 17.06.2008 was entered into between the Corporate Debtor and M/s.SBI Factors and Commercial Services Private Ltd. As per the terms of the Factoring Agreement, the Corporate Debtor has provided bill discounting facility whereby the bills issued to the Corporate Debtor by its creditors would be paid by M/s. SBI Factors and Commercial Services Private Ltd. The Corporate Debtor would pay the agreed amount towards the bill discounting facility as a debt of the Corporate Debtor and in the event such amounts are not paid within due dates, the Corporate Debtor would have to pay a penal interest @ 3% per month from the due date until date of payment of the debt by the Corporate Debtor. With a view to secure the risk under the Factoring Agreement M/s.SBI Factors and Commercial Services Private Ltd. had taken a credit insurance policy from the Financial Creditor M/s.IFFCO TOKIO General Insurance Co. Ltd. covering post shipment risk of insolvency and protracted default.

4. The Factoring Agreement permits M/s.SBI Factors and Commercial Services Private Ltd. to assign the Factoring Agreement and benefits thereunder to any third party. The Corporate Debtor committed protracted default in payment of its dues to SBI Global and hence, SBI Global lodged its claim of Rs.18,03,73,673/- to the Financial Creditor as per the insurance policy, in respect of the Purchase Bill Factoring Facility provided by the SBI Global to the Corporate Debtor. Because SBI Global assigned the claim of debt of Rs.18,03,73,673 to the Financial Creditor against the payment of Rs.16,23,36,305/- by way of a deferred payment plan, and a subrogation deed was executed on 20.06.2011 between the Financial Creditor and the SBI Global, about which the Corporate Debtor was duly informed about the assignment of the said debt vide letter dated 21.06.2011 (notice of assignment), the receipt whereof was acknowledged by the Corporate Debtor by counter-signing the letter. The said letter expressly provides that payment of the aforesaid sum by the Corporate Debtor to the Financial Creditor will discharge the Corporate Debtor of all liabilities to SBI Global. The Applicant has sent a statutory notice on 12th September 2011 claiming the above said amount under sections 433 and 434 of the Companies Act, 1956 to the Corporate Debtor. Reply was received on 30th September 2011 which is placed at 

Page 241. The reply consists of two pleas. One is that the Financial Creditor has no right to issue notice and there is no privity of contract between the Applicant and the Corporate Debtor. However, it is clear from Section 5 (7) of I&B Code, 2016 which is reproduced as under “Financial Creditor” means any person to whom a financial debt is owned and includes a person to whom such debt has been legally assigned or transferred to. In view of this, the contention of the Corporate Debtor is patently untenable.

5. We heard the counsel for petitioner and perused the documents. We are satisfied that the default has occurred on the part of Corporate Debtor. Therefore, we allow the application of the Financial Creditor and order the commencement of the corporate insolvency resolution process which ordinarily shall get completed within 180 days, reckoning from the day this order is passed. We also appoint Mr.V.Magesh as interim resolution professional who has been proposed by the Financial creditor. His details are given below :

Mr. V.Magesh,
IBBI/IPA 002/IP00215/2016-17/1930
No.39/19 Aspen Court, 3rd floor,
6th Main Road, R.A.Puram, Chennai-600 028.
Contact No: 044 24331082
Email :vmacsibc@vmacs.co.in

He is directed to take charge of the Corporate debtor immediately.
He is also directed to cause public announcement as prescribed under Section 15 of the Code within three days from the date the copy of this

order is received, and call for submissions of claim under section 15 of IBC 2016 in the manner as prescribed.

6. We declare the moratorium which shall have effect from the date of this order till the completion of corporate insolvency resolution process, for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- (d) The recovery of any property by an owner or less or where such property is occupied by or in the possession of the corporate debtor.

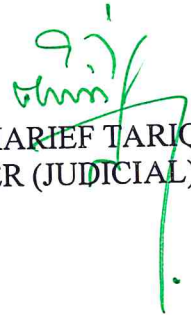
7. However, the supply of essential goods or services to the corporate debtor as specified shall not be terminated or suspended or interrupted during moratorium period. It is further made clear that the provisions of sub-section (1) of Section 14 of the Code shall not apply to such transactions as notified by the Central Government in consultation with any financial sector regulator.

8. The Interim Insolvency Professional 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 is expected to extend all assistance and cooperation to the Interim Resolution Professional as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

9. The Registry is directed to inform the Insolvency Resolution Professional to take charge of the entity and make compliance with this order as per the provisions of I&B Code, 2016.

10. Accordingly, the application of the Financial Creditor is allowed. The Registry is directed to issue copy of this order to the Financial creditor and Corporate debtor.


S.VIJAYARAGHAVAN
MEMBER (TECHNICAL)


CH.MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)

vp