

NATIONAL COMPANY LAW TRIBUNAL  
SINGLE BENCH  
CHENNAI

17

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

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

APPLICATION NUMBER : CA/54/2017  
IN  
PETITION NUMBER : CP/515/IB/2017  
NAME OF THE TRANSFEROR : SUMMER INDIA TEXTILES MILLS PVT LTD  
NAME OF THE TRANSFERRE : STATE BANK OF INDIA  
UNDER SECTION : 7 RULE 4

S.No.	Name (in Capital)	Represented by	Signature
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1. P.J. SRICANESHA  
AKSHITHA

For Summer India Textile  
Director

PJSR-C

2. N.M. KARTHIK  
(Pranalingam & Associates)

for State Bank of India


N.M. Kartik  
B...

3. C.V. Nandhantharam  
Resolution Supplement


for RP

## ORDER

1. Representative for RP present and filed CA/54/2017 in CP/515/IB/2017. Counsel for State Bank of India present. Counsel for Mr. Asai Thambi, Managing Director present and submitted that he is handicapped as he does not have instructions from his client.


2. The allegation in the application is that Mr. Asai Thambi, MD and Mr. S.S. Prabhakaran, General Manager-Finance (GM-F) of the 1<sup>st</sup> Respondent Company are not co-operating with the RP. It has been submitted by the representative for the RP that due to non-cooperation of the MD and GM-F, the RP is not in a position to provide the basic information to be shared in the form Information Memorandum in terms of Regulation 36 (1) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, with the Members of the Committee of Creditors. 

3. The copies of the Financial Statements for the period 2014-15 and 2015-16 have been provided which are of 4<sup>th</sup> September, 2015 and 2<sup>nd</sup> September 2016 respectively and relevant audit reports given are also back dated respectively. The Corporate Debtor refused to provide the books of accounts, soft copy of the account maintained in the tally, which has created doubt in the minds of the Committee of Creditors and accordingly, the appointment of forensic audit was initiated specifically keeping in mind the provisions of Section 43 (Preferential Transactions), Section 45 ( Avoidance Undervalued Transactions) and Section 50 (Extortionate Transactions) all read with Section 66 (Fraudulent Trading or Wrongly Trading) of the IBC, 2016.

4. On 11<sup>th</sup> October, 2017, the MD and GM provided print outs of books of accounts on specific ledgers and other documents, but refused to provide the soft copy of the accounts. However, on 14.10.2017, the GM has concocted a story that the accounting software is 

infested with virus, and hence, the same has crashed and therefore, they are unable to provide the soft version of the same. When the auditors have gone for the audit on 27.10.2017 for physical verification of the books, vouchers and documents and further to verify the genuineness of the claim of the Corporate Debtor with regard to the virus attack, MD warned the auditors against entering the premises of the Registered Office of the Corporate Debtor.

5. Accordingly, the Chartered Accountants/Forensic Auditors in the third meeting of Committee of Creditors presented their report which *inter alia* summarised their difficulty in conducting the audit without the soft copy of the accounts.

6. Due to the non-cooperation of the MD and GM, the Committee of Creditors in its third meeting dated 07.11.2017, resolved that the RP should initiate action under Section 19 of the I&B Code of the 2016 and to seek complete soft copy of the account of the Financial 



year 2008-09 to 2016 to 17 and from 1<sup>st</sup> April, 2017 to 20<sup>th</sup> November, 2017.

7. Having stated so, the following reliefs have been claimed by the RP under para 9-II:-

- a. *To provide the complete soft copy of accounts maintained in the tally, all physical books of accounts, documents and vouchers maintained in the registered office and all other units of the company for the financial years 2008-09 to 2016-17 and from 01<sup>st</sup> April, 2017 to 30<sup>th</sup> November, 2017.*
- b. *To provide all assistance, inputs and information to the forensic auditors and to permit them to enter the premises and complete the audit.*
- c. *To direct the Respondent No.1 / Corporate Debtor to co-operate with the Applicant / Resolution Professional / agencies / auditors and provide all necessary information in terms of Section 43 (Preferential Transactions), Section 45 (Avoidance of Undervalued Transactions) and Section 50 (Extortionate Transactions) of the IBC, 2016.*
- d. *To provide access to the Applicant/Resolution Professional and / or persons / professionals / agencies / auditors appointed by him in carrying out their duties under the CIRP.*
- e. *To direct the Respondent No.1 / Corporate Director to co-operate with the Resolution Professional and provide all necessary information as would be required to render his duties as per Section 25 of the IBC, 2016.*

7. As seen from the order dated 04.08.2017, it has been observed that the Corporate Debtor has been making efforts to stall the resolution process commenced on 13.06.2017 and did not provide the

relevant records to the RP for the performance of his duties. There is non-cooperation and creation of legal hurdles by the Corporate Debtor. Again the allegations have been levelled against the MD and GM-F for non-cooperation with the RP. In view of the above and the prayers made by the RP, Mr. Asai Thambi, MD and Mr. S.S. Prabhakaran, GM-F of the 1<sup>st</sup> Respondent Company are directed to co-operate with the RP by providing the documents and relevant information as stated in the relief clause of the application under adjudication.

8. Mr. Asai Thambi, M.D. and Mr. S.S. Prabhakaran, GM-F of the 1<sup>st</sup> Respondent Company are directed to file affidavits on 19.12.2017 before this Adjudicating Authority after making compliance with this order. Put up on **19.12.2017 at 10.30 A.M.**

  
(CH. MOHD. SHARIEF TARIQ)  
MEMBER (JUDICIAL)

P. ATHISTAMANI