NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 05.05.2026 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

PRESENT: SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

APPLICATION NUMBER	**: --**
PETITION NUMBER	**: CP(IBC)/78(CHE)2024**
NAME OF THE PETITIONER	**: Daedong Shipping Company Ltd**
NAME OF THE RESPONDENT(S)	**: Srivi Exports and Imports Pvt Ltd**
UNDER SECTION	**: Sec 9 Rule 6 of IBC, 2016**

ORDER

Vide separate order pronounced in open court, **CP(IBC)/78(CHE)2024** is Dismissed.

Sd/-
RAVICHANDRAN RAMASAMY
Member (Technical)

Sd/-
JYOTI KUMAR TRIPATHI
Member (Judicial)

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IN THE NATIONAL COMPANY LAW TRIBUNAL,

DIVISION BENCH – II, CHENNAI

CP (IB) / 78 (CHE) / 2024

(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

Daedong Sidpping Company Limited
Having Its Registered Office At Room 1503,
Le Meilleur Jongnotown, Jongno 19,
Jongno-Gu, Seoul, Republic Of Korea 03157
Represented By Its Authorised Signatory/
Mr. Gajendra Harakchand Golchha

… Operational Creditor/Applicant

-Vs-

Srivi Exports And Imports Private Limited
Cin - U74999tn2014ptc095951
Having Its Registered Office At 112 / 3a / 2,
Polpettai, Thoothukudi,
Tuticorin, Tamil Nadu, India - 628002.

…Corporate Debtor/Respondent

Order Pronounced on ***05th May 2026***

CORAM

SHRI JYOTI KUMAR TRIPATI, MEMBER (JUDICIAL)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Petitioners *:- Bharadwajaramasubramaniam, S. Diwaagar,*

For Respondent ***:-*** *Ebenezar Inbaraj Advocate*

O R D E R

(Heard Through Hybrid Mode)

1. This Petition has been filed under Section 9 of the Insolvency and Bankruptcy code, 2016 ("*IBC*") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by DaeDong Shipping Co. Ltd. seeking to initiate Corporate Insolvency Resolution Process against Srivi Exports and Imports Pvt. Ltd. (hereinafter referred to as '*Corporate Debtor*').

2. Part-I of the Petition sets out of the details of the Operational Creditor. It is averred that the operational creditor is located at Room 1503, Le Meilleur JongnoTown, Jongno 19, Jongno-Gu, Seoul, Republic of Korea 03157

3. Part-II of the Petition sets out the details of the Corporate Debtor, as srivi Exports and Imports Private Limited with Corporate Identification number as U74999TN2014PTC095951 located at 112/3A/2 Polpettai, Thoothukudi, Tuticorin, Tamil Nadu India 628002.

4. In Part-III of the Petition the Operational Creditor has not proposed any Insolvency Professional to act as a Resolution Professional and therefore, prayed the Tribunal to make a reference to the board for appointment of Interim Resolution professional.

5. Part-IV of the Petition states that the total outstanding Debt USD 150,000 (United States Dollar One Hundred and Fifty Thousand Only) equivalent to INR 1,24,32,810 /- (Indian Rupees One Crore Twenty-four

Lakhs Thirty-Two Thousand and Eight Hundred and Ten Only) as per prevailing exchange rate of Rs. 82.89 paise as on March 15, 2023, along with interest at the rate of 8% per annum from December 26 2023, till the date of payment and realisation and the date of default is mentioned as 20.01.2024

6. Part-V of the Petition describes the particulars of the Operational Debt, documents, records and evidence of the default as below:

- Invoice bearing no. DDS23-158 dated December 26, 2023
- Charterparty dated October 26, 2023 entered into by and between the Corporate Debtor and the Operational Creditor.
- Addendum to the Charterparty dated November 7, 2023 entered into by and between the Corporate Debtor and the Operational Creditor.

OPERATIONAL CREDITORS SUBMISSIONS:

7. It is submitted that On October 26, 2023, the Operational Creditor i.e., a Vessel owner and the Corporate Debtor i.e., a Charterer entered into a Charterparty for a single voyage charter for carriage of 22,500 MT Coal in bulk ("cargo") from Muara Berau Port, Indonesia to Mongla Port, Bangladesh ("Charterparty"). An Addendum to the Charterparty was signed on November 7 2023, to revise the dates of laycan and issue of Notice of Readiness ("NOR") from November 8, 2023 to November 18, 2023.

8. It is stated that Under the Charterparty, the Operational Creditor was required to provide the Vessel and the Corporate Debtor was responsible for timely loading of cargo and Clause 13 of the Charterparty states that: a) the Charterer must commence loading within 72 hours of NOR, failing which the Owner shall have a right to claim demurrage b) if demurrage accrued for more than 5 days since NOR, the Charterer must pay the demurrage forthwith upon receiving Owner's Invoice or the Owner shall have the right to sail the vessel out and c) the Charterer is responsible for demurrage.

9. It is stated that in spite of providing the vessel and issuing NOR as per the Charterparty, the Corporate Debtor failed to commence loading of cargo thereby failing to perform its obligations under the Charterparty. However, in email dated November 23, 2023, the Corporate Debtor acknowledged its non-performance, agreed to compensate the Operational Creditor for its losses and suggested that the Operational Creditor may arrange for other Shippers as it could not offer alternative Shippers. In response, the Operational Creditor conveyed that the vessel would be' sailed out as per Clause 13 due to Corporate Debtor's non-performance.

10. It is stated that On November 27 2023 the Operational Creditor issued an invoice calling upon the Corporate Debtor to pay the dead freight and demurrage as per Clause 13. In response on November 30, 2023 the Corporate Debtor acknowledged non-performance of the Charterparty. It

stated that it was not in a position to pay dead freight but volunteered to pay a reasonable amount for the demurrage claim.

RESPONDENT'S SUBMISSIONS:

11. It is stated that the entire case of the Operational Creditor is premised upon an alleged Charter Party Agreement dated 26.10.2023 and a subsequent Addendum dated 07.11.2023 allegedly executed on behalf of the Respondent through one Mr. T.P.S. Ponkumaran, claimed to be the Person-inCharge (PIC) of the Respondent, it is stated that Respondent denies that any such contract was ever entered into with the Applicant or that the said person had any authority whatsoever to bind the Respondent Company.

12. It is stated that the present case the dispute relates to formation of contract authority of signatory and nature of claim formation of contract authority of signatory and nature of claim. Such issues require detailed evidence and adjudication.

FINDINGS OF THE TRIBUNAL

13. We have heard the learned Counsels for both the parties and perused the documents on record.

14. This is an application filed by DAEDONG SIDPPING COMPANY LIMITED wherein the applicant states that there is amount due and payable

by the corporate debtor to the tune of Rs 1,24,32,810 the applicant has relied on Copy of the Charterparty dated October 26, 2023 and Copy of the Addendum to the Charterparty dated November 7, 2023, copy of invoice email correspondence to detail on the business transaction between the parties.

15. At this juncture it is relevant for us to refer to the agreement relied on by the applicant on perusal of the charterparty relied by the applicant it is seen that the e-mail address doesn't mention the corporate debtor and the agreement doesn't mention any representation from the corporate debtor. Further on analysing the e-mail correspondence with the parties it is seen that the T.P.S Pon Kumaran in person with his personal email has discussed on deliberations with the applicant.

16. It is pertinent to note that Section 9 of the IBC, only an "Operational Creditor" is entitled to file an application for initiation of Corporate Insolvency Resolution Process. The term Operational Creditor has been defined in Section 5(20) read with Section 5(21) of IBC which reads as follows:

> *(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;*
> *(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the 1[payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*

17. The core of the Applicant's claim rests upon a purported agreement and email correspondences involving Mr. T.P.S. Pon Kumaran however it is a fundamental principle of corporate jurisprudence that a company is a separate legal entity and the person representing should ascertain valid authorisation. It is seen that Mr. T.P.S. Pon Kumaran is not connected to the Respondent Company and is not a promoter, shareholder, employee or key managerial person of the company or has no authority sanctioned by board through a resolution to enter a contract or compromise on behalf of the Respondent. Therefore any deliberations by Mr. T.P.S. Pon Kumaran through his personal email id would not bind the Respondent, It is seen that the purported Addendum to the Charter Party Agreement is fundamentally defective as It is neither executed on duly stamped paper nor properly authenticated by the corporate debtor.

18. It is a settled position of law that any agreement purporting to bind a corporate entity must satisfy statutory formalities including execution by duly authorized persons and compliance with stamping requirements. In the absence to substantiate the same the contention of the applicant cannot be considered. The communication or correspondence made by the personal email-id of TPS Ponkumaran and his acknowledgement of debt from his personal email id will not bind the Respondent as he is not a duly authorised person to act on behalf of the Respondent whether he is father of the director or any other familial relationship. A bare perusal of the correspondences

clearly establishes that the TPS Ponkumaran is not duly authorised person to act on behalf of the Respondent.

19. This tribunal had directed Mr Ponkumaran to file an affidavit and through post Mr Ponkumaran has brought on record that the present dispute is between Mr Ponkumaran and Mr Ajit Metha working for East gate Chartering Ltd and no contract of any nature was entered by the ship owner and the it is an independent dispute. That being the case we are of the considered view that the liability cannot be casted upon the corporate debtor, the debt has not been crystallised by the applicant against the respondent to initiate CIRP against the respondent, to initiate CIRP the debt should be crystallised and it should be without pre-existing dispute in this petition placed before us for adjudication the applicant has not crystallised the debt against the respondent.

20. At this juncture we would make is abundantly clear that the trigger point of initiation of Corporate Insolvency Resolution Process (CIRP) against the Company is when a Corporate Debtor is no longer in a position pay the debt and the obligations to its creditors, and in its Financial distress. This tribunal shall not be viewed as a tool for Debt recovery which is not related to the company against whom the CIRP is sought for. We are of the considered view that the applicant has failed to prove that operational debt is due by the corporate debtor to applicant to initiate CIRP against the company.

21. In light of the foregoing discussion this Tribunal is of the considered view that the petition filed by the applicant is liable to be **dismissed**.

22. Accordingly, Company Petition CP (IB) / 78(CHE) / 2024 is Dismissed and disposed of.

-SD-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-SD-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)

Rannika