

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH- IV

CP No. 2207/MB-IV/2019

Under section 7 of the IBC, 2016

In the matter of

Mr. Satish Sadashiv Rane
701, Evershine Co-operative Housing
Society, Nanik Niwas,
Opposite Ghatla Agri
Samaj Mandir Hall, Ghatla Village
Chembur.

...Petitioner/Financial Creditor

V/s

Shah Group Builders Limited
323-329, Arenja Corner Plot number 71.
Sector-17, Vashi, Navi Mumbai-400705

...Corporate Debtor

Order Pronounced On: 08.07.2021

Coram:

Mr. Rajesh Sharma
Member (Technical)

Mrs. Suchitra Kanuparthi
Member (Judicial)

Appearances (Via Video Conference):

For the Petitioner	:	Mr. Anshu Bhanot Adv. a/w Ms. Priyanka Zaveri Adv.
For the Respondent	:	Mr. Nitin Thakkar Adv.

Per: Suchitra Kanuparthi Member (Judicial)

ORDER

1. This company Petition is filed by Mr. Satish Sadashiv Rane(hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Shah Group Builders Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the extent of Rs.9,30,04,018/-, by invoking the provisions of Section 7 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 4 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Financial Creditor and Corporate Debtor executed settlement agreement dated 28 February 2019 ("Settlement Agreement") to settle outstanding loan obligations of the Corporate Debtor and bring the Corporate Debtor out from the corporate insolvency resolution process ("CIRP"). The Corporate Debtor was ordered into CIRP in furtherance of an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC") filed by the Financial Creditor against the Corporate Debtor before the Hon'ble National Company Law Tribunal, Mumbai ("Hon'ble NCLT") bearing C.P. (IB) No. 556 (MB) of 2018 ("First Application"). The First Application was heard and adjudicated by the Hon'ble NCLT and upon admission, the CIRP proceedings were initiated against the Corporate Debtor by order dated 14 February 2019.

3. The Corporate Debtor had issued post dated cheques to the Financial Creditor for an amount equivalent to Rs. 6,25,00,000 to be disbursed on various dates, and had agreed to clear the bank loan account to the Central Bank of India, Turbhe Branch by 31.08.2019 and agreed to pay the amount as per the Settlement Agreement but the

Corporate Debtor defaulted in repaying the same in a time bound manner.

4. Further, after entering into the settlement agreement, the Corporate Debtor approached the Hon'ble National Company Law Appellate Tribunal, New Delhi ("Hon'ble NCLAT") to record the said settlement agreement and to set aside the CIRP proceedings vide an order of the Hon'ble NCLAT dated 07 March 2019. The Corporate Debtor had expressly admitted in the Settlement agreement its liability towards a debt owed to the Financial Creditor and had agreed to assume the entire admitted liability as a loan extended by the Financial Creditor to the Corporate Debtor as on the date of the Settlement agreement.

5. The Corporate Debtor had made the statement under oath before the Hon'ble NCLAT and the same was also recorded in the said order dated 07 March 2019, whereby the Corporate Debtor assured to abide by the terms of the Settlement agreement and also make good the payments as described therein. The Corporate Debtor had subsequently defaulted in repaying multiple tranches of the loan repayment as agreed in the settlement agreement. As per the said order dated 07 March 2019 passed by the Hon'ble NCLAT, if the Corporate Debtor failed to abide by the terms of the Settlement agreement or failed to make good the payment of the post-dated cheques, the Financial creditor would be at a liberty to revive the CIRP proceedings.

6. Further, as per the settlement agreement, the Corporate Debtor unconditionally and irrevocable acknowledged that it has received the loan from the Financial Creditor through various modes and had agreed to assume liabilities for repayment of the insolvency resolution professional's fees and a cumulative amount of INR 6,82,00,000 (Indian Rupees Six Crore Eighty-Two Lakh only) along with all outstanding amounts under the loan account of the Financial Creditor, bearing account number

3913957031 with the Central Bank of India, Turbhe Branch in relation to flat number E/1809, Shah Kingdom, Plot Nos. 23-26, Sector 20, Kharghar, Navi Mumbai -410210 ("Bank Loan Account"). Thus, the total amount of debt/liability of the Corporate Debtor towards the Financial Creditor amounts to the summation of INR 6,82,00,000 (Indian Rupees Six Crore Eighty-Two Lakh only) plus interest of INR 18,00,000 (Indian Rupees Eighteen Lakh only) plus insolvency resolution professional fees as per actuals plus outstanding amounts under the Bank Loan Account ("Loan Amount"). The break-up of which is as detailed below:

Particulars	Amount (INR)
Towards balance payable after excluding Interest and Advance	6,07,00,000
(+) advance payable, on or before signing of the Settlement Agreement i.e. 28 February 2019 ("Advance")	75,00,000
Sub-Total:	6,82,00,000
(+) interest being levied for the duration of repayment of amounts to be paid by the Corporate Debtor, till 5 October 2019 (as stated in the repayment schedule of the settlement agreement)("interest")	18,00,000
(+) insolvency resolution professional (IRP) fees (as per actuals)	4,50,000*
(+) outstanding amounts under the Bank Loan Account	2,25,54,018*
Total: Loan Amount	9,30,04,018

*fees as communicated by the IRP to have been received by him as per actuals.

**outstanding amounts under the Bank Loan account is an indicative figure as provided to the Financial Creditor by the Central Bank of India, Turbhe Branch as on 25 February 2019 and the amount payable to the bank shall be crystallised as per actuals on full and final payment.

7. The Corporate Debtor had agreed to repay the Loan Amount in the manner as outlined in Clause 1(b) of the Settlement agreement. The Corporate Debtor had issued the said post-dated cheques to the Financial Creditor for an amount equivalent to 6,25,00,000 (Indian Rupees Six Crore Twenty-Five Lakh only) to be disbursed on various dates by the Corporate Debtor and had agreed to clear the Bank Loan Account to the Central Bank of India, Turbhe Branch by 31 August 2019. For reference, the Loan Amount agreed to be paid by the Corporate Debtor along with their payment milestones, based on the settlement agreement, is set out below. For ease of reference, please see the current status of each such milestone payment in the table below:

Due dates	Amounts paid/ due but not paid/not due	Drawn on/In favour of	Status
28 February 2019	Advance of INR 75,00,000	Equitas Small Finance Bank-in favour of Satish Sadashiv Rane- Financial Creditor	Paid on 02 March 2019
28 February 2019	Fees as charged by the IRP for	Equitas Small Finance Bank	Paid on 05 March 2019, 18

	his services rendered INR 4,50,000		March 2019 and 03 April 2019 in three different tranches
05 April 2019	INR 25,00,000	Equitas Small Finance Bank- in favour of Satish Sadashiv Rane- Financial Creditor	Cheque deposited on 11 May 2019 and dishonoured on 14 May 2019 due to insufficient funds
05 May 2019	INR 5,00,000	Equitas Small Finance Bank- in favour of Bhavika Unnadkat	Cheque deposited on 11 May 2019 and returned on 23 May 2019 for unspecified reasons
05 May 2019	INR 45,00,000	Equitas Small Finance Bank-	Cheque deposited on 11 May 2019 and
		in favour of Satish Sadashiv Rane- Financial Creditor	and dishonoured on 14 May 2019 due to insufficient funds
20 May 2019	INR 50,00,000	Equitas Small Finance Bank- in favour of Satish Sadashiv Rane- Financial Creditor	Cheque deposited on 20 May 2019 and dishonoured on 21 May 2019 due to insufficient funds

05 June 2019	INR 50,00,000	Equitas Small Finance Bank- in favour of Satish Sadashiv Rane- Financial Creditor	Cheque deposited on 06 June 2019 and dishonoured on 07 June 2019 due to insufficient funds
20 June 2019	INR 50,00,000	Equitas Small Finance Bank- in favour of Sujeet Satish Rane	Cheque deposited on 06 June 2019 and dishonoured on 07 June 2019 due to insufficient funds
20 June 2019	INR 50,00,000	Equitas Small Finance Bank- in favour of Sujeet Satish Rane	Due on 20 June 2019
05 July 2019	INR 75,00,000	Equitas Small Finance Bank- in favour of Satish Sadashiv Rane- Financial Creditor	Due on 05 July 2019
20 July 2019	INR 75,00,000	Equitas Small Finance Bank- in favour of Satish Sadashiv Rane- Financial Creditor	Due on 20 July 2019
05 August 2019	INR 75,00,000	Equitas Small Finance Bank- in favour of Satish Sadashiv Rane- Financial Creditor	Due on 05 August 2019

05 September 2019	INR 75,00,000	Equitas Small Finance Bank- in favour of Sujeet Satish Rane	Due on 05 September 2019
05 October 2019	INR 1,00,00,000	Equitas Small Finance Bank- in favour of Sujeet Satish Rane	Due on 05 October 2019
On or before 3 August 2019	All outstanding amounts under the Bank Loan Account= INR 2,25,54,018** **outstanding amounts under the Bank Loan Account is an indicative figure as provided to the Financial Creditor by the Central Bank of India, Turbhe Branch as on 25 February 2019 and the amount payable to the bank shall be crystallised as per actuals on full and final payment.	Central Bank of India, Turbhe Branch	Due on or before 31 August 2019

Out of the Loan Amount, the Corporate Debtor has made due payments towards the IRP fees and has also paid the agreed Advance to the Financial Creditor. As on date, the outstanding loan amount due and payable by Corporate Debtor to the Financial Creditor amounts to INR 6,25,00,000 (Indian Rupees Six Crore Twenty-Five Lakh only) *plus* all outstanding amounts under the Bank Loan Account ("**Outstanding Loan Amount**") which the Corporate Debtor had agreed and undertaken to repay to the Financial Creditor as per the terms of the Settlement Agreement and as per the milestones set out in the Settlement Agreement, but has defaulted in repaying the same in a time bound manner. Hence, the Financial Creditor is filing this said application for default of repayment of Outstanding Loan Amount.

8. The Corporate Debtor placing reliance on the Settlement Agreement, approached the Hon'ble NCLAT, seeking to set aside the order dated 14 February 2019. The Hon'ble NCLAT, after hearing both the Parties, passed an order dated 07 March 2019 which held that:

"...8. It is also informed that for the rest of the amount is payable by post-dated cheques issued by the appellant. The Appellant and the 1st Respondent being bound by the Terms of Settlement' will ensure that the post-dated cheques are encashed within time, failing which it will be open to the parties to revive the 'Resolution Process'."

9. The petitioner deposited the cheque dated 05 April 2019 and 05 May 2019 issued in the name of the Financial Creditor on 11 May 2019. Both of the aforesaid cheques were dishonoured. The cheque dated 05 May 2019 for an amount of INR 5,00,000 (Indian Rupees Five Lakh only) issued in the name of Bhavika Unnadkat was returned for unspecified reasons. Presumably though, the cheque issued in the name of Bhavika Unnadkat would have been dishonoured since the cheque issued

to the Financial Creditor of an even date was also dishonoured due to insufficient funds. Upon occurrence of such default in repayment, the Financial Creditor issued a reminder vide an email dated 14 May 2019 to the Corporate Debtor, requesting them to remedy the default and ensure that the subsequent payment of INR 50,00,000 (Indian Rupees Fifty Lakh only) due on 20 May 2019 was not dishonoured. The Financial Creditor followed up with second reminder vide email dated 16 May 2019, requesting the Corporate Debtor to ensure that the amounts payable on 05 April 2019 and 05 May 2019 were paid at the earliest.

10. Thereafter, the Financial Creditor deposited the cheque dated 20 May 2019 on 20 May 2019 with the bank, which was dishonoured on 21 May 2019 for the same reason of insufficient funds in the account of the Corporate Debtor. The Corporate Debtor/its representative, on 22 May 2019 responded on email stating:

"Dear Sir, We will send you a sum of Rs 50,00,000/- on or before 05/06/2019. Kindly ignore our earlier email dated 25.04.2019 on this subject. We will inform you about the further schedule of payment after getting clarity of our cash -flows. Kindly do not deposit any of the cheques given to you. kindly do not pursue any legal options. Thanks & Regards,".

11. In spite of providing the assured date for repayment, the Corporate Debtor continued to default in its repayment obligations and no payment was received on 05 June 2019 as well. In fact, the Corporate Debtor sent another email dated 05 June 2019 stating that the Corporate Debtor will make a payment of INR 50,00,000 (Indian Rupees Fifty Lakh only) on or before 13 June 2019 instead of the earlier date of 05 June 2019. Thereafter, the Financial Creditor deposited post-dated cheque of 05 June 2019 on 06 June 2019 for INR 50,00,000 (Indian Rupees Fifty Lakh only) which was also dishonoured. The Corporate Debtor has breached its

promises and has tried to deceive the Financial Creditor time and again. The Corporate Debtor has completely disregarded the Settlement Agreement.

FINDINGS:

12. The only issue which arises for consideration is whether there has been a breach of payment terms by the corporate Debtor under the Settlement Agreement dated 28.02.2019?

13. It is an undisputed fact that the parties had executed the Settlement Agreement and the Corporate Debtor was obligated to strict adherence of terms and conditions of payment which he obliterated and committed default of payment terms. Post admission of CIRP against the Corporate Debtor on 14.02.2019, the parties executed the Settlement Agreement dated 28.02.2019 and the Corporate Debtor filed the same before the Hon'ble NCLAT. The Hon'ble NCLAT on 7.03.2019 set aside the admission order and observed as follows:

"...8. It is also informed that for the rest of the amount is payable by post-dated cheques issued by the appellant. The Appellant and the 1st Respondent being bound by the Terms of Settlement' will ensure that the post-dated cheques are encashed within time, failing which it will be open to the parties to revive the 'Resolution Process'."

14. The terms of Settlement Agreement at clause 'h', categorically envisages the events of default. Clause 'h' is as follows:

"if the Corporate Debtor fails to pay the agreed amounts as per the loan amount repayment schedule or defaults in repaying any dues claimed by the concerned bank under the flat loan account in accordance with clause 1(f) above, it will be considered a material default of the Corporate debtor's debt obligation to the financial creditor and the Financial Creditor

will have the discretion and liberty to initiate any and all action that it deems appropriate under applicable law, including but not limited to re-initiating the existing application or filing a fresh application before the concerned judicial forum. The parties agree that dishonor of the cheques provided (in clause 1b) for any reason whatsoever including but not limited to 'insufficiency of funds or stop payment' instructions etc.. shall be a valid and irrefutable evidence of the default committed by the corporate debtor under the agreement towards the Corporate Debtor's loan obligations."

The Corporate Debtor has committed default of payment terms and cheques for the month of April and May were dishonored. The corporate Debtor vide letter dated 22 May, 2019 promised to pay an amount of Rs50,00,000/ and requested not to take any legal action. All the terms of payment were again defaulted and the cheque in June were also dishonored. Hence the petitioner exercised his rights under the Settlement Agreement and has filed the present petition. The loan Agreement was subsumed in the Settlement Agreement dated 28.02.2021 and this replaced all previous arrangements between the parties. The said settlement Agreement was taken on record in the order of Hon'ble NCLAT vide its order dated 07.03.2019. There is a debt and default of payment terms of settlement Agreement dated 28.02.2019 and all ingredients of Sec7 of I & B code are thus satisfied and petition is thus admitted.

15. The matter was listed on 9.08.2019, when the corporate debtor failed to appear and notice was issued, thereafter on 26.08.2019, the corporate debtor appeared and handed over a cheque of Rs1 Crore to the petitioner prove his bonafides and explore the possibilities of settlement. On 17.09.2019, the Learned Senior Counsel for the Corporate Debtor sought three weeks time to make a clear proposal and handed over a demand draft of Rs. 1 crore in lieu of the bounced cheque. The matter was again heard on 17.10.2019, wherein the Learned Senior counsel

appearing for Corporate Debtor mentioned that two demand drafts of Rs5 Lakh each were handed over to the financial Creditor. On 18.11.2019, the Ld Senior counsel for Corporate Debtor sought short adjournment since OTS with Central Bank was actively under consideration. On 17.12.2019, Mr Nalin Shah Chairman of Corporate Debtor was present in person and had undertaken to discharge the liability of Central Bank of India on or before 31.01.2020 and undertook to pay principal amount of Rs3.75 Crore on or before 25.3.2020. On 10.01.2020, both sides were present and sought time. On 12.02.2020, the matter was further adjourned to 12.03.2020 to report progress of settlement with Central Bank of India. The matter was again adjourned to 03.04.2020 for reporting progress. On 04.01.2021 the matter was heard and was reserved for orders. The Corporate Debtor failed to file any reply. On 05.05.2021, the matter was posted for pronouncement of orders, however, in view of orders passed in IA 2492/2020 in CP 2207/2019 seeking extension of time for the undertaking of payment of monies, the pronouncement of orders was deferred till 05.07.2021. On 05.07.2021, the matter was adjourned to 08.07.2021, the counsels from both sides were present and it was informed that the amounts were not paid. There is a clear default of non-payment of monies by Corporate Debtor and hence the petition is admitted.

16. The Petitioner filed IA 1531 of 2020 on 22.07.2020 for urgent listing of the Company Petition another IA 1367 of 2020 is filed on 05.08.2020 for the change the name of the IRP both the IA are disposed off accordingly.

17. This Bench having been satisfied with the Petition filed by the Petitioner which is in compliance of provisions of Section 7 of the Insolvency & Bankruptcy Code, admits this Petition, declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) that the order of moratorium shall have effect from .12.2020 till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- (f) that this Bench hereby appoints Mr. Sudha Pravin Navanadar residing at D 519-520, Neelkanth Business Park, Nathani Road, Vidyavihar West, Mumbai City, Maharashtra ,400086; having Registration No.BBI/IPA-001/IP-P00451/2017-2018/10794; as Interim Resolution Professional to carry the functions as mentioned under the Code.

18. Accordingly, this Petition is admitted.

19. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

Sd/-

Rajesh Sharma
Member (Technical)

08.07.2021

Sd/-

Suchitra Kanuparthi
Member (Judicial)