

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV

CP (IB) No.137/MB-IV/2020

Under Section 7 of the IBC, 2016

In the matter of

Canara Bank

...Financial Creditor

v/s.

Shah Group Builders Ltd.

[CIN:]

...Corporate Debtor

Order Delivered on: 03.01.2024.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Financial Creditor:

Ms. Priya, Ld. Counsel.

For the Corporate Debtor:

Mr. Rohit Gupta, Ld. Counsel.

ORDER

1. This is a Company Petition filed on 09.01.2020 under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Canara Bank ("Financial Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Shah Group Builders Ltd., Ors., the Corporate Debtor.

1.1 The petition is filed on 10.01.2020 and the total outstanding amount is Rs.98,69,95,052/- inclusive of interest. The account was declared NPA on 31.12.2016.

Submissions of the Financial Creditor:

2. The Financial Creditor states that, the Respondent No. 1 have availed Term Loan Facility of Rs.75,00,00,000/- from Central Bank of India and Term Loan Facility of Rs.60,00,00,000/- from Applicant/ Financial Creditor i.e. Canara Bank, totalling to Rs.135,00,00,000/-. The Applicant further states that Applicant came to know that the Respondent No. 1 have also availed certain Credit Facilities from Reliance Capital Limited.

2.1. The Financial Creditor further submits that, the Respondents Nos. 2 to 4 stood as Personal Guarantors and Respondent No. 5 stood as Corporate Guarantor and have separately executed and delivered Deed of Personal Guarantee dated 12.09.2013 for Rs. 135,00,00,000/- and Deed of Corporate Guarantee dated 12.09.2013 for Rs. 135,00,00,000/- and thereby guaranteed repayment of the dues under the aforesaid Credit Facilities.

2.2. The Respondent No. 1 initially availed Credit Facilities from Central Bank of India a sum of Rs. 135,00,00,000/- and from Reliance Capital Limited a sum of Rs.90,00,00,000/- and have executed and delivered an Indenture Mortgage Deed of their property viz. First Pari Passu charge on Plot No. 23/24 & 25/26, Sector -20, Kharghar, Navi Mumbai (14028 sq. mtrs.) with building to be constructed thereon, and have created mortgage in the favour of Central Bank of India and Reliance Capital Limited. The Applicant further states that upon the request of the Respondent No. 1 out of Rs. 135,00,00,000/- granted by Central Bank of India a sum of Rs.60,00,00,000/- was taken over by the Applicant / Financial Creditor i.e. Canara Bank. Therefore, Central Bank of India granted Rs.75,00,00,000/- and Applicant Le. Canara Bank granted Rs.60,00,00,000/- totalling to

Rs.135,00,00,000/-. Accordingly, the Central Bank of India and the Applicant have executed and delivered Inter Se Agreement as per the terms of Agreement and understand between the parties; Respondent No. I have mortgaged their above referred property viz. Plot No. 23/24 & 25/26, on Pari Passu charge between Central Bank of India and the Applicant. The Respondent No. 1 has submitted necessary Board Resolutions to that extent and have also submitted Debenture Trust Deed dated 12.09.2013. The Applicant i.e. Canara Bank further states that Central Bank of India by their Letter bearing Ref. No. CFB:CR:14-15:738 dated 25.06.2014 as well as Trustee i.e. Cent Bank Financial Services Limited by their Letter bearing Ref. No. CENTFIN:2014:C-57:508 dated 16.07.2014 have conceded the creation of mortgage of the above referred property on pari passu basis in favour of the Applicant. The Applicant/ Financial Creditor states that there is a valid and subsisting mortgage on pari passu basis with Central Bank of India. The Respondent No. 1 Pledge the following Shares on parri passu basis with the Central Bank of India and also executed and delivered Agreement for Pledge of Shares dated 17.07.2014.

Name of Company	Nos. of Shares
ISIN	68,13,862 out of 3,0070,000 DMAT Shares

2.3. Accordingly, Applicants have permitted fresh Term Loan Facility of Rs.60,00,00,000/- being the portion to be down sold by Central Bank of India. The Term Loan Facility was against Hypothecation of pari passu first charge over the existing moveable and immovable assets of the Company including Stocks, WIP, Receivables, Inventories, Goodwill, Patents etc., vide Sanction Letter bearing Ref. No. FB/CR-1278/TL/JH/2014 dated 05.06.2014 and have also agreed to execute the necessary security documents in favour of above Lenders and have passed necessary Board

Resolution dated 23.06.2014 passed by Respondent No. 1 i.e. M/s. Shah Group Builders Ltd.

- 2.4. That Respondents Nos. 2 to 4 have executed and delivered Joint Guarantee Agreement dated 25.06.2014 for Rs.60,00,00,000/- and Respondent No. 5 have executed Guarantee Agreement dated 25.06.2014 for Rs.60,00,00,000/-; and Respondent No. 5 have executed Guarantee Agreement dated 25.06.2014 for Rs.60,00,00,000/-; thereby guaranteed repayment of the dues under the aforesaid Credit Facilities and other monies to Applicant.
- 2.5. The Applicant/ Financial Creditor Canara Bank further states that, Applicants have disbursed the aforesaid Credit Facilities and Respondents have utilized the same for above mentioned purpose.
- 2.6. The Applicant/ Financial Creditor Canara Bank states that, Respondent No. 1 through its Director i.e. Respondent No. 4 have executed and delivered the [NF 760] Acknowledgement of Debt and Security dated 25.04.2015 and 21.01.2017 for Credit Facilities in favour of Applicant.
- 2.7. The Applicant Canara Bank further states that, Respondent No. 1 through its Directors i.e. Respondents Nos. 2 to 4 have executed and delivered the Revival Letter dated 23.11.2017 for Credit Facilities in favour of Consortium Members.
- 2.8. The Applicant / Financial Creditor Canara Bank further states that Respondents have failed and neglected to regularize the account and failed to pay the regular instalments. The Applicant states that their account has been classified as NPA on 30.12.2016.
- 2.9. The Applicant/Financial Creditor Canara Bank further states that, after the account declared an NPA, Applicant have issued Notice dated 13.04.2017 u/s, 13(2) of SARFARSI Act, 2002 to Respondents Nos, 1 to 5 in respect of

Property viz. Plot No. 23/24 & 25/26, Sector 20, Kharghar, Navi Mumbai (14028 sq mts.) with building to be constructed thereon.

- 2.10. The Applicant/Financial Creditor further states that a Secured Creditor Mr. Satish Sadashiv Rane have filed a Company Petition bearing No. C.P.(IB)-556/(MB)/2018 filed in this Tribunal/Forum against the Respondent No. 1, which was admitted by this Hon'ble Court / Forum. Thereafter, the Respondent No. 1 have settled their claim with the said unsecured creditor. Accordingly, the Company Appeal (AT) (Insolvency) being No. 208 of 2019 was dismissed as withdrawn on 07.03.2019. Therefore, the applicants are filing the present Application.
3. The Financial Creditor filed an IA No. 4202/2023 seeking permission of the court to delete the names of the Respondents No.2 to 5 in Company Petition 137/2020. This bench vide order dated 06.11.2023 permitted the Financial Creditor to amend the petition deleting those names from the cause title. The Company petition was reserved for order on 24.11.2023. It was observed that the Financial Creditor had not carried out the amendment to which the matter was listed for clarification on 15.12.2023 regarding the same. The Corporate Debtor submitted across the bench that they have no objection to delete the names of the Respondents i.e. R2 to R5 as they are only Personal Guarantor not the Personal borrower/Corporate Debtor in this Petition.

Submissions on behalf of the Respondent No.1:

4. The Corporate Debtor states that, the Application is defective for the reasons that it relates to multiple parties. The Application is filed as against five different persons which includes three Individuals and one Corporate Entity other than the Respondent No. 1. In these circumstances the Application in the manner it is filed is not maintainable and therefore deserves to be dismissed.

4.1. The Application is also without any Authorization as required under law.

This Application is filed on the basis of Power of Attorney which nowhere demonstrates that it is for the purpose of initiating bankruptcy proceedings. The Power of Attorney nowhere demonstrate that how the Power of Attorney authorized the signatory to file proceedings. It is pertinent to mention that the Power of Attorney is dated 21/07/2007, and therefore, by no stretch of imagination it could have been given to authorize the deponent for filing the proceedings under Insolvency and Bankruptcy Code.

4.2. The Bank has also failed to produced statement of accounts of all the accounts in accordance with the provisions as required under the Insolvency and Bankruptcy Code. The Bank has not given due breakup of the amount claimed and there is inconsistency between the amount claimed and the accounts produced. The Bank has further failed to produce the complete statement of account as required under the provisions of Bankruptcy Code. The Certificates issued under the Bankers Book Evidence Act are not signed and are incomplete.

Findings:

5. We have heard the arguments of Learned Counsel for Financial Creditor and the Corporate Debtor.

5.1. As per the material on record, this bench finds that the Corporate Debtor has admitted the debt by way of acknowledgement letters dated 23.04.2015 and 21.01.2017. The Corporate Debtor's obligation to repay the Financial Creditor is unequivocal, undisputed and established. The Tribunal, while adjudicating upon an application for admission into Corporate Insolvency Resolution Process filed by a Financial Creditor, is mandated to ascertain the existence of the debt, and any default in payment of such debt. Further in the facts and circumstances as set out, it is clear that the Corporate Debtor

is unable to pay off its debts arising in the usual and ordinary course of its business and is in default of the amount claimed in the petition.

5.2. The contentions/objections have no bearing as debt and default is established therefore, this bench finds no merits in the contentions of the Corporate Debtor.

6. From the averments made by the Counsel of both the sides, it is abundantly clear that there is a debt of Rs. 98,69,95,052/- (comprising of principal amount and interest) payable by the Corporate Debtor to the Financial Creditor.
7. Considering the facts placed before us and the fact that, the Corporate Debtor owes the Financial Debt in excess of Rs.1 Crore, which is in default, this bench is of the view that in such circumstances, it is imperative that the Corporate Insolvency process to be initiated in the matter of the Corporate Debtor. The petition is complete in all aspect. Since, the debt and default exist, and the present petition is filed within limitation therefore this bench is of the view, that the present case deserves to be admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

ORDER

6. The Petition bearing CP (IB) No.137/MB-IV/2020 filed under section 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Canara Bank (“Financial Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of M/s. Shah Group Builders Ltd., Ors., the Corporate Debtor is **Admitted**.
 - a) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) 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;
- (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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 (SARFAESI) Act, 2002;
 - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium, -
- (v) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (vi) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) The bench hereby appoints **Mr. Srigini Rajat Naidu**, an Insolvency Professional registered with Indian Institute of Insolvency Professionals of ICAI having registration number **IBBI/IPA-003/IP-N00137/2017-2018/11513** and email-**rajat_naidu@yahoo.com** . He is appointed as IRP for conducting CIRP of the Corporate Debtor and to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Financial Creditor shall deposit a sum of Rs.5,00,000/- (Rupees Five lakh only) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- (i) In view of the submission of the financial creditor that there are no assets left with the Corporate Debtor, the IRP is directed to satisfy himself about this assertion and proceed to take appropriate steps accordingly.
- (j) The Registry is directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (k) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
03.01.2024.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)