

**NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH**

**COURT III**

2. C.P.(IB)-32(MB)/2022

CORAM: SH. H. V. SUBBA RAO, MEMBER (J)  
MS. MADHU SINHA, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL  
COMPANY LAW TRIBUNAL ON **12.01.2023**

NAME OF THE PARTIES: Asian Granito India Limited

V/s.

Shapoorji Pallonji And Company Pvt Ltd

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

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**ORDER**

Mr. Abhishek Singh, Mr. J. Amal Anand, Elvin Joshy, Insha Mushtaq, Ms. Alisha Sharma, counsels for the Respondent are present through virtual hearing.

**C.P.(IB)-32(MB)/2022**

Order pronounced in the open court vide separate order. In the result, the above C.P.(IB)-32(MB)/2022 **is allowed and Mr. Hemendra Paliwal is appointed as IRP.**

Sd/-  
MADHU SINHA  
Member (Technical)  
//SGP//

Sd/-  
H. V. SUBBA RAO  
Member (Judicial)

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 32/IBC/MB/2022**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 6  
of the Insolvency and Bankruptcy  
(Application to Adjudication Authority)  
Rule 2016)

*In the matter of*

**M/s Asian Granito India Ltd.**

Having registered office at: 202, Dev Arc,  
Opp. Iskon Temple S.G. Highway,  
Ahemedabad- 380015

.....Operational Creditor

*Vs*

**M/s Shapoorji Pallonji and Company Pvt.  
Ltd.**

(CIN: U45200MH1943PTC003812)

Registered office at: 70, Nagindas Master  
Road Fort Mumbai MH 400023

.....Corporate Debtor

**Order delivered on: 12.01.2023**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble MS. Madhu Sinha, Member (Technical)

**For the Applicant:** Mr. Amir Arsiwala, Advocate

**For the Respondent:** Mr. Abhishek Singh, Advocate

**Per: H.V. Subba Rao, Member (Judicial)**

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1. The above Company Petition is filed by *M/s Asian Granito India Ltd.* hereinafter called as Operational Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against *M/s Shapoorji Pallonji and Company Pvt.Ltd.* called as Corporate Debtor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Operational Debt of Rs. 9,32,16,566 (Rupees Nine Crore Thirty Two Lakh Sixteen Thousand Five Hundred and Sixty only).
  
2. The submissions of the Operational Creditor are as follows:
  - i. The Operational Creditor and the Corporate Debtor are a public limited company incorporated under Companies Act, 1956. During the routine course of Business Operational Creditor supplied the corporate debtor with the requisite materials throughout India including Delhi, Hyderabad and Andhara Pradesh.
  - ii. All the said material were received by the Corporate Debtor without raising any objections or dispute and for the same the Operational Creditors issued the invoices. As per the terms and condition mentioned on the invoices, the Corporate Debtor was under an obligation to make payment within 30 days of receiving a bill.
  - iii. That even after so many follow ups and Corporate Debtor failed to pay the requisite amount to the Operational Creditor.
  - iv. In view of the repeated reminders and follow ups the Operational Creditor issued a demand notice dated 14.07.2021 upon the Corporate Debtor on its registered

address under the Code calling upon the Corporate Debtor to pay the Operational Creditor sum of Rs. 9,32,16,566/-. The Operational Creditor did not receive any reply from the Corporate Debtor nor received any payment from the side of the Corporate Debtor. Hence this application.

3. The Corporate Debtor filed a detail affidavit in reply of Mr. Vivek Puranik, the authorized representative of the Corporate Debtor opposing the above Company Petition.
4. Heard Mr. Amir Arsiwala, counsel appearing for the Operational Creditor and Mr. Abhishk Singh, counsel appearing for the Corporate Debtor.
5. Mr. Arsiwala invited the attention of this Bench to the settlement agreement dated 29.07.2022 which was entered into between the parties subsequent to filing of the Company Petition whereunder both parties agreed for a settlement of Rs. 4,93,62,007/- payable in instalments commencing from August 2022 to May 2023. He further submits that the Corporate Debtor committed default in repayment from the first instalment itself. It is his submission that the Corporate Debtor paid nearly 2 lakhs short of the first instalment of Rs. 60,00,000/-, and paid 13,07,000/- against the second instalment of Rs. 54,00,000/-, and 47,90,000/- against third instalment of Rs. 54,00,000/-, and 13,07,000/- each under 4<sup>th</sup> and 5<sup>th</sup> instalments respectively against 54,00,000/- each due and payable under 4<sup>th</sup> and 5<sup>th</sup> instalments. Therefore, he submits that the corporate debtor has admitted the 'debt' and 'default' by entering into consent terms and committed further default in paying instalments due and payable under the consent terms and prayed for admission of the Company Petition.
6. Mr. Abhishek Singh, counsel appearing for the corporate debtor opposing the above argument submits that the last instalment being payable on 10.05.2023 the Operational Creditor cannot

insist for admission of the present company petition at this stage and the short fall amount due and payable under instalments 1 to 5 is less than the threshold limit of Rs. 1 core and therefore the above Company Petition is not maintainable and cannot be admitted.

7. The above argument of the counsel appearing for the Corporate Debtor is not only fallacious but also misconceived and ill-conceived and is liable to be rejected, since the amount due under the remaining instalments is above one crore. In addition to the above, the threshold limit has to be looked into only at the time of the filing of the Company Petition and not on the short fall amount on account of default committed by Corporate Debtor.
8. Therefore, for the aforesaid reasons, there is no legal force in the above Contention raised by the Corporate Debtor. In view of the admission of the 'debt' and 'default' committed by the Corporate Debtor by way of consent terms, this tribunal did not find any valid reasons to reject the above Company Petition. The petitioner has also suggested the name of proposed Interim Resolution Professional in part-3 of the Petition along with his consent letter in Form-2. Thus, the present company Petition satisfies all the necessary requirements for admission. Accordingly, the above Company Petition is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) 32 (MB)/2022 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Shapoorji Pallonji and Company Pvt. Ltd.
- b. This Bench hereby appoints **Hemendra Paliwal** ([paliwal.hemendra@gmail.com](mailto:paliwal.hemendra@gmail.com)) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01830/2019-2020/12788 as the interim resolution professional to carry

out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs.2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards fee till his fee is decided by COC.
- d. That this Bench hereby prohibits 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; 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.
- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the

corporate insolvency resolution process 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.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, this Petition is admitted.
- l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

**MADHU SINHA**  
**MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**