

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P.(IB)No.69/BB/2018
U/s 10 of the I&B Code, 2016
R/w Rule 7 of the I&B (AAA) Rules, 2016

In the matter of:

M/s Shantha Projects Limited,

S-9/A First Floor,
Shantha Skyline Apartment,
Adjacent to KPTCL,
M.J. Nagar, Hospet,
Karnataka - 583 203.

- Corporate Applicant

Versus

State Bank of India
Stressed Assets Management Branch,
2nd Floor, Office Complex Building,
LHO Campus, No.65,
St.Marks Road,
Bengaluru -1.

- Respondent

Date of Order: 10th October, 2018

Coram: 1) Hon'ble Shri Rajeswara Rao Vittanala, Member (J)
2) Hon'ble Dr. Ashok Kumar Mishra, Member (T)

Parties/Counsel Present:

For the Petitioner : Shri S.Peer Mohamed with Shri B.R. Gururaj,
Director
For the Respondent : Shri Anil Kumar H.

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.69/BB/2018 is filed by **M/s. Shantha Projects Limited**, under Section 10 of the Insolvency and Bankruptcy Code, 2016, read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority)Rules, 2016, by seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Shantha Projects Limited. The total amount of debt and default committed as per the Corporate Applicant as on 20.08.2013 is Rs.45,87,06,798/-
2. Brief facts of the case, as mentioned in the application, are as follows:

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- 1) M/s. Shantha Projects Limited (Corporate Applicant) is registered under the provisions of the Companies Act on 02.01.2009 in the State of Karnataka. It is an Authorized Share Capital of Rs.20 Crores and Paid-up Share Capital of Rs.19.50 Crores. The main object of the applicant is power generation. In order to set up a 10 MW thermal power plant at Koppal, the applicant had requested the respondent bank (hereinafter referred to as SBI) for financial assistance along with a detailed project report (hereinafter referred to as DPR). As per the said DPR, the expected term loan from the bank was Rs.34 Crores and expected working capital from the bank was Rs.2 Crores. The period of construction was estimated to be from January 2011 to March 2012 and interest payable for this period was estimated at Rs.2,19,58,333/-.
- 2) As against the aforesaid requirement of the applicant, SBI has sanctioned only a sum of Rs.32.5 Crores towards term loan and it has not sanctioned any amount towards working capital, which should invariably be a part of industrial loan, without which setting up of the industry becomes unviable. The said loan was sanctioned vide sanction letter dated 09.05.2011.
- 3) Since there was difficulty for the applicant to complete the project for want of working capital and also for the reason of escalation of price, the applicant was sanctioned with a working capital of Rs.6.5 Crores and Term Loan-II of Rs.3.7 Crores as per the sanction letter dated 19.08.2013.
- 4) Considering the difficulties of the applicant, SBI has restructured the aforesaid 2 term loans, i.e., Term Loan-I & Term Loan-II, (TL-I & TL-II for short) as per the letter dated 04.04.2013. The outstanding interest was written off and the repayment schedule of the term loans is restructured. There was no repayment for the year 2013-2014.



- 5) The applicant's power plant was forced to be under shut down from 18.12.2013 due to labyrinth seal damage in turbine. On account of the same, the payments due to applicant were held up and even then, the promoters of the applicant company have arranged a sum of Rs.25 Lakhs towards alleged interest. These facts have been communicated to the respondent vide letter dated 27.01.2014.
- 6) Disregard of all the difficulties of the applicant, SBI has continued to force the applicant to pay the interest, payment of which during construction period is contrary to the basic concept for industrial loan, and continuously written letters to the applicant. In the meanwhile, SBI has been threatening that they would seize the plant unless the interest is paid.
- 7) In furtherance of pressure tactics, SBI has issued a legal notice dated 31.07.2014 to the applicant alleging that the applicant has not adhered to repayment schedule and recalled the entire loan amount. The applicant has replied to the said notice stating that the Company will be restructured by bringing in new equity capital through the investor. On the same day, the applicant has also sought the approval of SBI for restructuring. SBI failing to acknowledge the genuine effort of the applicant, went ahead with issuance of notice U/s. 13(2) of the SARFAESI Act dated 30.08.2014 and called upon the applicant to discharge the liabilities in full being a sum of Rs.45,37,06,798/- within 60 days.
- 8) Instead of considering the objections of the applicant, SBI issued one more letter dated 29.09.2014 stating that the loan account of the applicant would be transferred to Stressed Assets Management branch from the Overseas Branch of SBI and further stating that the same would put more financial burden on the applicant. It is submitted that the same is contrary to all the known cannons of law.



- 9) Further, SBI issued e-auction sale notice dated 25.06.2018 for the remaining scheduled properties obtained as security by the bank for the loan sanctioned, and the reserve price of Rs.16.49 Crores for all the scheduled properties. The date of e-auction sale was fixed on 25.07.2018. No offer of purchase even near to the reserve price was received by SBI in response to the above said e-auction sale notice. Subsequent to the above said abortive attempt, SBI has given a OTS offer for an amount of Rs.20.96 Crores vide its letter dated 20.08.2018 on certain terms and conditions and set the last date for accepting this offer as on 30.09.2018.
 - 10) The only viable solution to the stalemate as well as to run the Company as going concern, available to the applicant is to take recourse to route of insolvency resolution process as envisaged in the Insolvency and Bankruptcy Code, 2016, and thus filed the present petition.
3. State Bank of India, Financial Creditor, has filed a reply dated 09.04.2018, by inter alia, contending as follows:
- 1) The Corporate Applicant has approached the Bank and sought for certain financial facilities. Therefore, the Bank has sanctioned credit facilities on 19.08.2013, by taking securities like Land and Building. Corporate Guarantee was also given by M/s. Padmavathi Commercial Impex (P) Ltd., and Personal Guarantee was given by Shri B.R.Gururaj and Shri B. Ramakrishna.
 - 2) The Corporate Applicant became Non-Performing Asset (NPA) on 31.08.2013. Therefore, the following notices were given:
 - a. Demand Notice was sent to the Borrowers on 30.08.2014 under Section 13(2) of the SARFAESI Act, 2002.
 - b. Notice under Rule 6(2) and 8(6) of the Security Interest (Enforcement) Rules was addressed to the Corporate Applicant on 30.11.2016 for sale of the Hypothecated Assets of the Company.



- c. Notice dated 12.12.2016 under Rule 4(2A) of the Securities Interest (Enforcement) Rules.
- 3) It is stated that the Company which is having lands with considerable value cannot be treated as insolvent. The Corporate Applicant has filed a Securitization Application challenging the sale of Secured Assets in respect of the loan granted and the same is numbered as IR No.2963/2017 before DRT-1 Bengaluru.
- 4) The Bank , subsequently has also filed an Affidavit dated 01.10.2018, by inter alia, stating as follows:
- a. Current Outstanding Rs.31,33,90,751.67.
- b. Total recover in the account so far Rs.13,19,95,047/- which includes monies realized through e-auction of guarantors properties under SARFAESI Act. Total Dues as on 30.09.2018 is Rs.67,33,08,314.67.
- c. The Financial Creditor had offered an One Time Settlement of Rs.20, 96,14,221/- which the Corporate Debtor had to pay 5% of the same on or before 30.09.2018, which has not been paid.
4. The Corporate Applicant as well as State Bank of India has filed a Joint Memo dated 01.10.2018, by inter alia, stating that the Company Petition may be admitted and Shri B. Parameshwara Udpa may be appointed as Interim Resolution Professional (IRP). The Corporate Applicant has fixed the cost of fee of IRP at Rs.75,000/- (Rupees Seventy Five Thousand Only) plus GST, out of which 50% to be paid immediately and the balance to be paid on completion of Insolvency Resolution Process. The IRP also has filed Form No.2 dated 03.09.2018 by accepting proposal to appoint him as IRP by inter alia declaring that he was not undergone any disciplinary proceedings, he is a qualified Resolution Professional etc.
5. Heard Shri .S.Peer Mohamed with B.R. Gururaj, Director for the Petitioner, and Shri Anil Kumar H, Learned Counsel for the Respondent. We have carefully perused the pleadings of both the parties.




6. As stated supra, the debt and default in question is not in dispute. The Corporate Applicant has committed a default for an amount of Rs.45,87,06,798/, which is subject reconciliation of accounts, if any, in the meanwhile. The instant Company Petition is filed in accordance with the law and all the documents in respect of default are also filed along with the Petition. Both the Corporate Applicant and Financial Creditor seeking to admit the CIRP by appointing Shri B. Parameshwara Udpa, as IRP. The proposed IRP has also filed written communication in Form No.2 dated 03.09.2018 declaring to accept appointment as the Interim Resolution Professional and disclosed that he is not currently serving as an IRP/RP/Liquidator in any proceedings and no disciplinary proceedings are pending against him. He has also enclosed the Certificate of Registration dated 06.04.2018 issued by IBBI bearing I.P Registration No. IBBI/IPA-002/IP-N00480/2017-2018/11445 along with an Affidavit dated 29.09.2018 by declaring that Affidavit in support of the written communication. Therefore, it is a fit case to admit and to initiate CIRP in respect of the Corporate Applicant.

9. Hence, by exercising powers conferred on this Adjudicating Authority, under Section 10(4)(a) of the IBC, 2016, we hereby admit C.P (IB)No.69/BB/2018 with the following consequential directions:

- 1) Shri B. Parameshwara Udpa, having IBBI Regn. No. IBBI/IPA-002/IP-N00480/2017-2018/11445, is hereby appointed as Interim Resolution Professional by fixing the fees to Rs.75,000/- (Rupees Seventy Five Thousand only) plus GST, which is to be paid by the Applicant to conduct the Corporate Insolvency Resolution Process in respect of **M/s. Shantha Projects Limited.**
- 2) The following moratorium is declared prohibiting all of the following, namely:
 - a. 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;

- b. Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c. 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 Act, 2002;
 - d. 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. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
 - f. The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - g. The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.
- 3) The IRP is directed to follow all extant provisions of the IBC, 2016, and all the extant rules framed by the IBBI from time to time. All the officials and Directors of the Corporate Applicant has to extend cooperation to the IRP in order to carry out his statutory duties as IRP.
 - 4) The IRP is directed to file his reports from to time to Tribunal about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within stipulated time.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL