

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

C.P. (IB) No.214/BB/2020  
U/s 9 of IBC, 2016  
R/w Rule 6 of I&B (AAA) Rules, 2016

**IN THE MATTER OF:**

**Shapoorji Pallonji and Co. Pvt. Ltd.**

*Regional Office:*

7<sup>th</sup> Floor, Surya Chambers,  
No.124, HAL Airport Road,  
Bengaluru – 560 017.

- Petitioner / Operational Creditor

**Versus**

**Shore Dwellings Pvt. Ltd.**

*(formerly known as Mantri Dwellings Pvt. Ltd.)*

Mantri House, 41 Vittal Mallya Road,  
Bengaluru – 560 001.

- Respondent / Corporate Debtor

**Date of Order: 18<sup>th</sup> December, 2020**

**Coram:**

1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Counsel/Parties Present (Through Video Conferencing):**

For the Petitioner : Ms. Anupama Hebbar

**ORDER**

***Per: Ashutosh Chandra, Member (Technical)***

1. This is a Company Petition filed by M/s. Shapoorji Pallonji and Company Private Limited (hereinafter as 'Petitioner / Operational Creditor') U/s 9 of the Insolvency and Bankruptcy Code, 2016 ('Code') R/w Rule 6 of the I&B (Application to Adjudicating Authority) Rules, 2016 to initiate Corporate Insolvency Resolution Process in respect of M/s. Shore Dwellings Private Limited *(formerly known as M/s. Mantri Dwellings Pvt. Ltd.)* (hereinafter referred to as 'Respondent / Corporate Debtor') on the ground that it has committed default for an amount of Rs.6,98,47,408/- (Rupees Six Crore



Ninety Eight Lakhs Forty Seven Thousand Four Hundred and Eight only) as on 30.06.2020 excluding interest at the rate of 18% per annum, etc.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:
- (1) The Petitioner is a Company incorporated under the Companies Act, 1913 with CIN: U45200MH1943PTC003812 with its registered office situated at 70 Nagindas Master Road, Fort, Mumbai-400023 and regional office situated at 7<sup>th</sup> Floor, Surya Chambers, No.124, HAL Airport Road, Bengaluru-560017. The Operational Creditor is a global leader in engineering and construction, infrastructure and real estate amongst others.
  - (2) The Respondent is a Company incorporated on 28.09.2007 under the Companies Act, 1956 with CIN: U74140KA2007PTC044006 and having its registered office at Mantri House, 41 Vittal Mallya Road, Bengaluru-560001. Its Authorised Share Capital is Rs.25,00,00,000 and its Paid-up Share Capital is Rs.8,05,00,000.
  - (3) It is stated that in 2010, vide Letter of Acceptance dated 10.12.2010, the Corporate Debtor awarded the main contract works for the construction of '*Mantri Pinnacle-High Rise Residential Development*' ('Project') off Bannerghatta Road, Hulimavu, Bengaluru to the Operational Creditor. Pursuant to the LOA, the total cost of the said project was placed at Rs.103,97,89,507, inclusive of VAT and Service Tax.
  - (4) Accordingly, the Operational Creditor and the Corporate Debtor executed the contract for construction works in the Project dated 14.01.2011 ('Construction Contract'). The works for the same were duly carried out by the Operational Creditor and the Virtual Completion Certificate for the Project was issued by the Corporate Debtor on 09.01.2020 declaring the Project virtually completed as on 30.12.2019.
  - (5) Clause 14.13 of the Construction Contract provides that after issuance of Final Statement by the Contractor (Operational Creditor), the Engineer is required to issue the Final Payment Certificate to the Employer (the Corporate Debtor) within 56 days and payment towards the same is to be made by the Corporate Debtor within 56 days thereafter.



- (6) Having satisfactorily completed its works under the Construction Contract, the Operational Creditor, in accordance with Clause 14.11 issued an application for the Final Payment Certificate on 09.05.2019 vide letter No. SPCPL/MANTRI/RO-CONTRACTS-015 for a cumulative gross value of work done of Rs.104,74,33,943 and net payable amount calculated at Rs.12,45,89,866.
- (7) The Corporate Debtor failed to make payment under the terms of the Construction Contract. In view of the default in payment by the CD and with a view to amicably resolve matters, a meeting was held between the Operational Creditor and the Corporate Debtor on 01.10.2019.
- (8) During the Settlement Meeting, the Corporate Debtor and the Operational Creditor mutually agreed that the Corporate Debtor admittedly owes the Operational Creditor a sum of Rs.6,98,47,408 including GST, after deduction of all necessary adjustments would be the net amount payable by the Corporate Debtor to the Operational Creditor. It was decided that a Settlement Agreement would be signed between both parties and the entire Acknowledged Debt would be released in 3 instalments as follows: (i) Rs.2,00,00,000 by 31.12.2019 (ii) Rs.2,00,00,000 by 31.03.2020 and (iii) Rs.2,98,47,408 by end of 30.06.2020.
- (9) Thereafter, the Minutes of Settlement Meeting along with a scanned copy of the Final Summary sheet signed by both the parties was shared to the Operational Creditor vide email dated 04.10.2019. The CD then issued the draft Settlement Agreement on the agreed payment terms vide email dated 25.10.2019. Despite several reminders, the CD did not complete the formalities towards signing the Settlement Agreement. The Operational Creditor on 11.12.2019 issued the Settlement Agreement signed by it vide letter No.SPCPL/MANTRI/RO-CONTRACTS-16 for the Corporate Debtor's counter signature.
- (10) In response thereto, the CD vide letter ref. CA/Pinnacle/01/2019, on 03.01.2020 confirming its liability to pay the Operational Creditor the settled sum of Rs.6,98,47,408 and further requesting a revision of the dates for paying each instalment, against the earlier agreed dates.



- (11) Despite being under no obligation to accommodate the CD's request, the Operational Creditor permitted the concessions sought for by the CD and vide its email dated 03.01.2020 once again issued the revised Settlement Agreement (bearing the signature of Authorised Rep. of the Operational Creditor), revising the payment schedule as follows: (i) Rs.2,00,00,000 by 15.02.2020 (ii) Rs.2,00,00,000 by 30.04.2020 and (iii) Rs.2,98,47,408 by 30.06.2020.
- (12) The revised draft Settlement Agreement signed by the Operational Creditor has never been returned by the CD with their counter-signature despite several reminder emails addressed to CD during Dec.2019 to July, 2020. It is stated that the underlying liability has remained undisputed at all points.
- (13) With all three agreed upon dates for clearance of dues having lapsed without any payments by the CD, the Operational Creditor issued a notice bearing Ref. No. SPCPL/MANTRI/RO-CONTRACTS-017 on 06.07.2020 to the CD providing a period of 10 days for the CD to make the requisite payment, failing which the Operational Creditor would be forced to resort to remedies available contractually and under law to recover the dues. Further, it was brought to the CD's attention that the Operational Creditor would be entitled to claim interest @ 18% per annum for the defaulted amounts from the date of default.
- (14) It is stated that on 18.07.2020, the Operational Creditor received a letter from the CD bearing No.CA/Pinnacle/18/2020 expressing their refusal to sign the Settlement Agreement in view of the Covid-19 pandemic and the resultant slow-down in the real estate market. In turn, vide said letter, the Operational Creditor was offered an apartment in the same Project 'Pinnacle', in lieu of the payment dues. It is stated that even at this stage, the CD did not dispute their liability towards the Operational Creditor nor in fact to the timeline for payment nor to the fact that the CD had been in breach of their payment obligations of the admitted liability. The CD's offer to settle the dispute by an alternate payment mechanism, the value of which was inherently uncertain and significantly lower than the admitted liability was unacceptable to the Operational Creditor and was therefore rejected.



- (15) In light of the CD's failure in making payment of the outstanding amounts, the Operational Creditor issued a Demand Notice dated 05.08.2020 to the CD demanding payment in respect of unpaid operational debt for a sum of Rs.6,98,47,408. In response thereto the CD has vide letter dated 14.08.2020 sought 15 days' time to respond to the said Demand Notice. Despite the lapse of the 15 day period, the Operational Creditor has not received a response from the Corporate Debtor. Therefore, as per Sec.8(2)(a) of the Code, the Corporate Debtor has not raised any dispute with regard to, and has in turn once again admitted its dues to the Operational Creditor.
3. Heard Ms. Anupama Hebbar, learned Counsel for the Petitioner / Operational Creditor through Video Conferencing. None appears for the Respondent. We have carefully perused the pleadings of the party and extant provisions of the Code and the Rules made thereunder.
4. Ms. Anupama Hebbar, learned Counsel for the Petitioner, while reiterating the averments made in the Petition has further stated that settlement talks between both the Operational Creditor and Corporate Debtor had been in progress but the offer made by the Corporate Debtor had not been accepted by the Operational Creditor. The debt and default were clear and there was no dispute.
5. Before examining the facts of the case, we make it clear that the provisions of Code cannot be invoked for recovery of outstanding amount but can be invoked to initiate CIRP for justified reasons as per the Code. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*<sup>1</sup>, has inter alia, held that I&B Code, 2016 is not intended to be substitute to a recovery forum. The operational creditor cannot use the Code prematurely or for extraneous considerations or reasons as a substitute for debt enforcement procedures. It is also well settled that this Tribunal is not a dispute resolution forum.
6. Applying the above well settled principle in the instant case we take note that on completion of the project Mantri Pinnacle in December 2019 the cost of the project was Rs.103,97,89,507, and the net payable amount was

---

<sup>1</sup>(2018) 1 SCC 353



Rs.12,45,89,866. Out of this, as per the Petition, the amount stated to be in default is only Rs 6,98,47,408, which the Corporate Debtor failed to make. Attempt was made to resolve the issue on 01.10.2019 and as per the agreement the same was to be paid in 3 instalments of Rs.2,00,00,000 by 31.12.2019, Rs.2,00,00,000 by 31.03.2020 and Rs.2,98,47,408 by 30.06.2020. On the CD's request these dates were revised to 15.02.2020, 30.04.2020 and 30.06.2020. On 18.07.2020, the CD communicated its refusal to sign the Settlement Agreement in view of the Covid-19 pandemic and the resultant slow-down in the real estate market. Instead, it offered an apartment in lieu of the debt, which was not accepted by the Operational Creditor. Finally, Demand Notice dated 05.08.2020 was issued to the CD demanding Rs.6,98,47,408. The CD vide letter dated 14.08.2020 sought 15 days' time.

7. It is clear from the above facts that the two sides have been in constant communication with regard to the recovery of the debt, till very recently and the negotiations have not concluded. The Corporate Debtor has shown willingness to pay and has made an offer. Further, it is seen that out of the total project cost of Rs.103,97,89,507, the net payable amount was calculated at Rs.12,45,89,866, and finally the total amount remaining payable is only Rs 6,98,47,408. That is, a substantial part of the debt has already been recovered by the Operational Creditor. Thus it is obvious that this is a clear case of the Operational Creditor pursuing recovery and through the present Petition is seeking the assistance of this Tribunal in its effort to recover the balance amount. This Tribunal and the IBC cannot be used as a recovery mechanism. This is clearly not the object of the Code.
8. It is further seen that the Corporate Debtor has cited the Covid-19 pandemic and the resultant slow-down in the real estate market as reasons for non-payment. We take notice of the impact of the present financial distress caused by the global Novel Corona virus pandemic necessitating a nationwide lockdown for several months starting from March 2020. This has adversely impacted businesses. The real estate sector has badly affected, resulting in incomplete projects and home buyers' suffering in the process. In the instant case, the demand as per the revised terms of payment was to be



paid in instalments on 15.02.2020, 30.04.2020 and 30.06.2020. Of these the second two instalments fall in the period of the Lockdown when business was at its lowest ebb. Major decisions had to be taken be taken by the Government to revive business, to inject economic stimulus, enable restructuring of debts, introducing modifications and suspension of various provisions of the Code, extending limitations of time etc. In this bleak scenario, it cannot be known whether it would be fruitful to push the Corporate Debtor into CIRP, or into liquidation if no Resolution Applicant comes forward. That would be against the objects of the Code.

9. Be that as it may, the Petitioner and the Respondent have been negotiating the terms of payment till very recently and the same are still on. The Corporate Debtor is willing to pay, only the terms are to be settled keeping in mind the present economic scenario. Hence, the Petition appears to be not only for recovery of debt but is premature. It would be in the interest of justice to allow the Corporate Debtor a few more months to clear the debt or settle the matter with the Petitioner. We are therefore of the considered view that at present this is not a fit case for admission.
10. For the reasons mentioned in the foregoing paragraphs, C.P. (IB) No.214/BB/2020 is hereby disposed as above. However, liberty is granted to the Petitioner/Operational Creditor to file a fresh Petition later, if it so considers, and if a case is otherwise made out as per the provisions of the Code. No order as to costs.

**ASHUTOSH CHANDRA**  
**MEMBER, TECHNICAL**  
Krishna

**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**