

**IN THE NATIONAL COMPANY LAW TRIBUNAL HYDERABAD
BENCH, HYDERABAD**

CP (IB) No.173/10/HDB/2017

U/s 10 of IBC, 2016

R/W 7 of I&B(AAA) Rules, 2016

In the matter of:

M/s Sri Vinayaka Paper & Boards Limited
#404, 4th Floor, The Concourse
7-1-58, Greenlands Road
Ameerpet, Hyderabad-500 016

... Petitioner/Corporate Debtor

Versus

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**



1. Union Bank of India
Industrial Finance Branch – Hyderabad
D.No.6-3-1090/b/4/101, 1st Floor
The Grand, Raj Bhavan Road
Somajiguda, Hyderabad -500082
2. State Bank of India
ICRISAT Branch, Patancheru – 502319
3. Indian Bank
Door No. 36-2-2-, Shyamalamba Road
Innispet, Rajahmundry
4. Bank of India
5-8-659, P.B. No. 134, Nampally Station Road
Hyderabad – 500 001
5. Andhra Bank
Ground Floor, Divya Shakti Apartments
Greenlands Road, Ameerpet
Hyderabad 500016

...Respondents/Financial Creditors

Date of order: 22.09.2017

CORAM

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Shri Ravikumar Duraisamy, Member (Technical)

Parties / Counsels Present

For the Petitioner : Shri Sandeep Reddy Sama, Advocate

For the Respondents : Shri V. Sethu Madhava Rao alongwith Shri
Dyumani, Shri S. Ameer Babu, Chief Manager,
Union Bank of India

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Petition bearing CP (IB) No.173/10/HDB/2017 is filed by M/s Sri Vinayaka Paper & Boards Limited (Petitioner / Corporate Debtor) under Section 10 of Insolvency and Bankruptcy Code, 2016 R/w Rule 7 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s Sri Vinayaka Paper & Boards Limited, under the provisions of IBC, 2016.
2. Brief facts, leading to filing of the present company petition, which are relevant to the issue in question, are as follows:-
 - 1) Sri Vinayaka Paper & Boards Limited (hereinafter referred to as "the petitioner/Corporate Applicant or the Company") is a Private Limited Company incorporated in the year 1995 under the provisions of Companies Act, 1956, and it is engaged in the business of manufacture of copier paper and boards out of recycled paper and pulp etc. Its authorized share capital of the Company as on 31.03.2017 is Rs.39,00,00,000/- comprising of 3, 90, 00,000 equity shares of Rs. 10/- each.
 - 2) The following is the table showing the debt position of the CD as on 31st March 2015:-



Name of the Bank	Term Loan (Rs. In Crores)
Union Bank of India	48.36
Indian Bank	32.24
State Bank of Hyderabad (Now SBI)	32.24
Andhra Bank	11.40
Bank of India	16.11
Total	140.35

3. The then Managing Director of the Company, Mr. Debabrata Kantha, submitted a letter dated 24th March 2015 to the lead-bank, requesting for restructuring of the repayment terms of the company's debt, citing various difficulties leading to cash-flow mismatches on account of lower production of Paper Unit-II and non-completion of Power plant. The following terms were proposed by the Company:-

- Cut-off date to be taken as 1st November 2014;
- Rate of interest to be made uniform @ 12%;
- Re-scheduling of existing term loan repayment from quarter ended March, 2015 to the quarter ended December 2016, which was to be repaid in 34 structured quarterly instalments;
- Funded Interest Term Loan (FITL), covering the period from 1st November 2014 to 30th September 2016, to be repaid in 24 quarterly instalments from quarter ended December 2016 &
- Replacement of one collateral property with another property of equivalent value.

4. Further, in the same letter, Mr. Debabrata Kantha informed the lenders that a set of strategic investors led by Mr. Srujan Garapati had invested an amount of Rs. 12.00 crores in the Company, and the funds brought in by them have been utilized for completing Paper Unit-II, and for payment of interest to lenders for the period July 2014 to September 2014. He further informed the lenders that the said investors would be investing further amounts, as may be required, for completion of the power plant and for bringing in the promoters' contribution towards the sacrifice amount for the proposed restructuring. The said investors would form the new promoters and management of the Company, and that there would be no significant change



in the collateral security available with the lenders. Further, Mr. Kantha committed to continue as the CEO of the Company till the new management is able to stabilize the operations of the Company.

5. The consortium members met on 30th March 2015, which was taken as the date of formation of the Joint Lenders Forum (JLF), and the following decisions were taken in respect of the Company's requests:-
- a. Cut-off date cannot not be pre-p'oned to 1st November 2014 and hence the request was rejected;
 - b. Corrective Action Plan was decided and recorded as Rectification / Restructuring of repayment schedule only. However, the same would be deliberated after submission of Techno Economic Viability (TEV) study;
 - c. Appointment of M/s MITCON Consultancy Services Pvt. Ltd. as TEV consultants;
 - d. Joint inspection cum consortium meeting to be conducted at project site, tentatively in the last week of April 2015 / first week of May 2015, after receipt of TEV study report&
 - e. Company to achieve commercial production from Power plant by 15th May 2015.



6. At the next JLF meeting held on 27th May 2015, draft report of the TEV consultants dated 24th May 2015, was taken up for discussion. The following were some of the key findings and suggestions of the report:-
- a. The project is technically feasible;
 - b. Capex of Rs. 12.00 crores (approx.) is required for completion of power plant, Rs. 1.00 crores for Building and Civil Works and about Rs. 2.00 crores for Paper Unit-II;
 - c. Success of restructure scheme is dependent on fulfilment of capex requirements&
 - d. Suggestions on outlines of the restructure scheme.
7. After due deliberation, the following decisions were taken:-

Particulars	Request by Company	Accepted/Rejected
Cut-off date of proposal	01 st November 2014	01 st April 2015

Rate of Interest on restructuring package	12%	14% (Base Rate of Lead Bank + 4.00%)
Postponement of repayment period for existing term loans	From QE March 2015 to QE December 2016. Hence, 1 st loan instalment to fall due in QE December 2016	Accepted
Modified repayment schedule for existing term loans	34 structured quarterly instalments commencing December 2016	Accepted
Approval of FITL for servicing interest for the period	18 months from April 2015 to September 2016	Accepted
Interest on FITL	To be serviced as and when due	Accepted
Repayment of FITL	24 quarterly instalments commencing from December 2016	Accepted
Replacement of property	Property owned by one shareholder to be replaced with property of equivalent amount, owned by Mr. SrujanGarapati	Rejected
Fresh personal guarantee of Mr. SrujanGarapati	Not offered	Mandatorily required



Additional Collateral security for additional exposure in the form of FITL	Not offered	Company to explore possibility for additional collateral
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The above decision wastaken subject to the following conditions:-

- a. Vetting of Company's plan for completion of power plant by an Lenders Independent Engineer (LIE);
 - b. Company to submit concrete plan for finishing incomplete work by 31st May 2015;
 - c. Company to clear over dues to all member banks till the cut-off date&
 - d. Investor may bring in funds in the form of Unsecured Loans.
8. The consortium members once again met on 27th June 2015, but no progress was made on the restructuring proposal of the Company. The lenders once again insisted that the Company should pay the 1st loan instalment, together with interest, and also decided to individually take up the matter of approval of the restructuring package with their respective sanctioning authorities.
9. The JLF again met on 13th August 2015, however no progress was made on the Company's proposal for restructuring. In the meanwhile, due to liquidity issues, the Letter of Credits (LC)s opened by the Company had started devolving. While Union Bank of India informed that their sanctioning authority had approved the restructuring package on that day itself, there was no progress from the other consortium members, who were all at different stages of processing, the same either at their Head Office or at their Branch level.
10. In the next JLF meeting held on 29th September 2015, the consortium members finally conveyed the sanction of the restructuring proposal, and while all consortium members executed the joint instrument, State Bank of Hyderabad did not execute the same, on the ground that critical dues remaining unpaid by the Company.
11. In the meanwhile, upon the insistence of the lenders, the new promoters had paid an amount of Rs. 6.93 crores to the lenders towards the 1st loan instalment and overdue interest, as under. This amount was supposed to be refunded back to the Company, since the restructuring was carried out for



the entire outstanding amount, and not the net amount after repayment of 1st loan instalment: -

12. Thus, even though the restructuring scheme was discussed in JLF meeting held on March 2015, the documentation and implementation of the scheme was delayed by over 6 months, and final sanction letters for approval for restructuring were issued only in the last week of September 2015. Precious time was lost due to uncertainties on the part of the lenders for taking decision on the package, and no meaningful progress could be made on project completion. Till such time, the Company was made to suffer liquidity issues, since the lenders had stopped opening Letters of Credit (LC's) for procurement of raw material, and the funds that were to be invested in the project by the new promoters were utilized for making payments to lenders.
13. In the JLF meeting held on 29th September 2015, the Company once again requested the lenders to refund the 1st loan instalment. Despite assurances made for immediate refund of the said amounts, the lenders did not release the funds within a reasonable time. While Andhra Bank adjusted the amount paid and issued a sanction letter dated 24th September 2015 wherein the Term Loans were restructured for the net amount only, Bank of India refunded their share of the amount on 30th September 2015, after retaining a sum of Rs. 17.00 lakhs towards adjustment for dues. Union Bank of India, Indian Bank and State Bank of Hyderabad committed to take up the matter with their sanctioning authorities for refund of the amounts paid to them.
14. Mr. Srujan Garapati was appointed as the Managing Director of the Company on 29th September 2015, after it was felt that the old management was incapable of turning the business around. By this time, he had already invested about Rs. 12.00 crores, part of which was utilized to make payments to bankers towards 1st loan instalment and overdue interest, enabling the restructuring exercise to be completed. -
15. The next consortium meeting was held at the project site at Rajahmundry on 4th November 2015, wherein the fact that the Paper Unit II had been dismantled was taken up. By this time, the Company had devolved on several LC's opened by the old management, and the financial position was



getting worse with defaults on statutory payments, labor dues, power charges and other creditors of the Company. There had been no progress on project completion due to lack of funds and the Company once again requested the banks for refund of the 1st loan instalment. By this time, only Bank of India had refunded the amount and other banks once again assured that the matter would be taken up with respective sanctioning authorities.

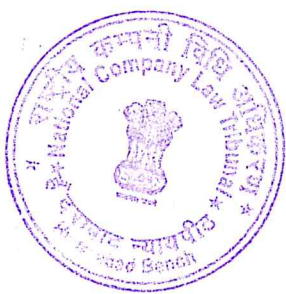
16. In the next JLF meeting held on 17th May 2016, the lead bank informed the other members that their sanctioning authority had finally approved the Company's request for refund of the 1st loan instalment, subject to the condition that the over dues of the consortium members be adjusted first and any surplus after the said adjustment can only be released to the Company. The lenders decided that the excess after adjustment of critical over dues to Union Bank of India be released to Andhra Bank, since they had assured to open fresh LC's to help the Company to procure raw materials for Unit-I, to the extent over dues of Andhra Bank are cleared. Even at that juncture, refunds from Indian Bank and State Bank of Hyderabad was still pending. The lenders also discussed the refinancing proposal put forth by the Company vide its letter dated 16th May 2016 for revival of the Company as piece-meal solutions would not work, given the liquidity condition of the Company and the status of the project. The following decisions were taken by the lenders regarding the Company's request :-



Name of the Bank	Future Course of Action
Bank of India	Bank will support the future plans provided the account is upgraded and viability is ensured.
State Bank of Hyderabad	Will support if viability is established.
Indian Bank	Bank will support the future plans provided the account is upgraded and viability is ensured.
Andhra Bank	Bank will support the future plans provided the account is upgraded and viability is ensured.
Union Bank of India	Bank will support the future plans subject to outcome of viability study.

The consortium further discussed the possibility of refinancing the debt of the company as per RBI circular No. DBR.BP.BC.No. 41/21.04.048/2015-16 dated 24th September 2015 on Prudential Norms on Change of Ownership of Borrowing Entities (Outside Strategic Debt Restructuring Scheme) and authorized lead bank to obtain opinion from any reputed CA firm conversant with the said provisions.

17. The next JLF meeting took place on 7th July 2016, at the project site, where the lenders also carried out an inspection of the unit. The account had been classified as "Sub-Standard" by all consortium members, except Union Bank of India, where it was still classified as "Standard – SMA 1". After discussing aspects of recovery and the various difficulties associated with taking possession of the unit and other assets, the consortium decided to explore the option of extending further financial assistance, considering the status of completion of the project.
18. Thereafter, the 2nd visit of the LIE team, along with representatives of bankers, took place on 30th -31st January 2017, including a visit to the vendors' premises where parts of the dismantled equipment had been sent for rectification / refurbishment. Most of the observations of the LIE team, from their draft report of September 2016, were answered by the Company, and a majority of the equipment of the Paper Unit II were accounted for. Despite this, the LIE team in its 2nd draft report, which was submitted after a delay of 2 months on 7th March 2017, expressed its inability to conclusively answer the questions raised as per the fresh mandate given on 16th November 2016.
19. The Company accepted the decision of the lenders and vide its letter dated 22nd June 2017 conveyed its willingness to start Paper Unit-I by infusing its own funds, to replace the collateral property situated at Vishakhapatnam with an alternate property of equivalent value at the time of documentation and to submit the ABS and PBS as requested. However, there has been no communication from the lenders regarding further action.



- 20) The following is current debt position of the company, as on 30th June 2017:-

Facility	Rs. in crores		Security
	Sanctioned	Current O/S*	
Term Loan + FITL	169.76	197.79	<ul style="list-style-type: none"> • Prime: - Charge on factory land & buildings, plant & machinery and other current and fixed assets. • Collateral: - Various properties, owned by Company, Directors and Associates. Total Value of Collateral Security = Rs. 43 crores.
Cash Credit	49.00	59.58	
Letter of Credit	14.00	--	
Total	232.76	257.37	

The "Asset Classification" of the Company's accounts by consortium member banks is "Non-Performing"

21. It is stated that the Company has proposed refinance of the existing debt, in line with the RBI Guidelines on Change in Ownership and Management of September 2015. The following are the details of the proposed refinance package:-

- Cut-off date to be taken as 30th June 2017 (subject to change);
- Reduction in applicable interest rate to 11.75% from 14.00% - 14.05%, linked to base rate;
- All outstanding Term Loans as on the cut-off date to be refinanced as "Term Loans";
- Outstanding FITL as on the cut-off date to be refinanced as "Term Loans";
- Un-applied charges upto the cut-off date to be refinanced as "Term Loan";
- "Additional Term Loan" to be sanctioned for meeting the last-mile project completion capital expenditure, including Rs. 1.00 crores for



“Project Monitoring & Project Consultancy Expenditure”, to be kept under lien with the lead bank;

- g. Irregular portion of Fund & Non-Fund based Working Capital Limits, to be carved out into “Working Capital Term Loan”;
- h. “Funded Interest Term Loan” (FITL) to be granted to cover interest outflow on all the above loans, i.e., Refinanced Term Loans, Additional Term Loan, Working Capital Loan and FITL for the period of 18-24 months;
- i. “Fund-based Working Capital Limits” to continue at existing levels – Rs. 49.00 crores at 12.50% ROI;
- j. Promoters to bring in 20% of Additional Capex requirement by way of Unsecured Loans as their contribution. Similarly, the Promoters Contribution @ 20% of the sacrifice amount to be brought in by way of Unsecured Loans, before 31st March 2019. These loans, along with existing unsecured loans will not be withdrawn during the pendency of the bank debt;
- k. Promoters to increase paid-up share capital of the Company by converting unsecured loans in next 3 financial years to improve the debt-equity ratio;
- l. Any capital infusion by way of IPO or Private Placement or by way of introduction of new investors in the Company to be first utilized to bring down the debt from the banks to suitable levels &
- m. Lead bank to front-end the disbursement and project monitoring, with the portion attributable to other member banks to be granted as sub-debt by the lead bank. The source of repayment of this sub-debt shall be the disbursements from the other consortium members.

22. It is stated that the financial condition of the Company has deteriorated significantly from the time the new promoter and his associates were introduced to the Company as strategic investors. Relying on the fact that there were 5 leading PSU banks associated with the Company, the new promoter conducted minimal due diligence regarding the conduct of the old management and promoters, availability of stocks and position of debtors and other liabilities. However, not only have the lenders accepted incorrect/inaccurate reports and statements from the old promoters, they



have not followed proper procedures in matters such as acceptance of insurance certificates and inspection of collateral properties. All these issues came to light when the new management and new promoters took control of the Company. Further, the amounts that the new promoters had planned to invest in completion of the project was utilized to pay the 1st loan instalment to the lenders, upon their insistence, and based on the understanding that since the restructuring would be done for the gross debt, these amounts would be refunded to the Company immediately after restructuring.

23. The new management is also being held responsible for the irregular acts perpetrated by the old management and promoter, Mr. Debabrata Kantha. Mr. Kantha had agreed to continue as the CEO of the Company for a period of at least 2 years, in line with the MOU dated 23rd September 2015 with the Mr. Srujan Garapati, but he did not keep-up his commitment and the last JLF meeting that he attended was on 29th September 2015. The new management sent a legal notice to Mr. Kantha on 9th January 2016, wherein they have asked Mr. Kantha to respond to misuse of funds, fudging of accounts with respect to availability of stocks, debtors, unsecured loans, creditors and other statutory liabilities, and issue of forged share certificates etc. Till date, Mr. Kantha has failed to even reply to the said notice. The new promoters decided to focus their energies on getting the Company's operations back on track and to pursue the aforesaid dispute legally in due course of time. However, despite being aware of the misconduct of Mr. Debabrata Kantha, the bankers never took any action against him or try to seek explanations from him. From since 4th November 2015, the lenders have merely "expressed displeasure" on the continued absence of Mr. Kantha from the various JLF meetings but have not taken any concrete steps to make him accountable or answerable for his conduct. Finally, on the back of efforts of the Company which traced Mr. Kantha, the lead-bank sent a letter dated 4th November 2016 to him, seeking clarifications on various issues. From a cursory reading of the reply dated 19th November 2016 sent by Mr. Kantha, it is clear that he is trying to disown responsibility for his acts, and allegedly blamed the new management for the problems faced by the Company, even when it is abundantly evident that all the allegations against the Company related to the events during his tenure as Managing Director of the



Company. The aforesaid reply from Mr. Kantha was shared by the lead bank with the Company only in February 2017. The Company replied to the lead bank vide its letter dated 10th February 2017, clearly explaining the Company's position on all the issues. The lead bank invited Mr. Kantha to attend the JLF meeting held on 27th March 2017, which he failed to attend. In the said meeting, the lenders further decided to engage the services of professional agencies to trace and locate Mr. Kantha, but till date, no progress has been made towards that end. Another letter dated 4th April 2017 was sent to Mr. Kantha by the lead-bank, seeking more clarifications, to which he replied vide his letter dated 8th May 2017. From reading the said reply, the Company's assertion is fortified. While Mr. Kantha has maintained silence on the issues of fake insurance certificates, and fake collateral property security situated at Vishakhapatnam which are offered by him to the lenders. Thus, for no fault of the new promoters and management, an environment of suspicion and distrust has been nurtured by the lenders, in spite of the fact that only through the dexterous efforts made by the new promoters and management that the aforementioned facts have come to the knowledge of the lenders.

24. Therefore, it is stated that the new management has conclusively answered and proposed remedies, along with action to be taken against the old management, in terms of RBI Guidelines dated 24th February 2016. The decision of the JLF has been unduly delayed, which has put the Company in a very precarious financial position. So in order to make efforts for revival or otherwise of the Company, the only alternative for the Company is to initiate CIRP under provisions of IBC, 2016 under the aegis of this Tribunal/Adjudicating Authority. Hence, the present petition.

25. The case was listed initially for admission on 31.08.2017 and directed the petitioner to take personal notice to all the five concerned Bankers by furnishing them all case papers filed in the present case and also intimate the next date of hearing and submit proof of service on the next date of hearing and thus posted the case to 13.09.2017. On 13.09.2017. Shri V.Sethu Madhava Rao, the Learned Counsel for the Respondents (Consortium Bank)



accepts notice and waives further notice and requested time to file a reply on behalf of all Consortium Banks. Accordingly, the case posted to 20.09.2017. On 20.09.2017, the Learned Counsel for the Respondents along with Shri Ameer Babu, Chief Manager, Union Bank of India, which is the lead bank of all the Consortium Banks, requested further till 22.09.2017.

26. The petition is strongly opposed by the respondents by filing a detailed reply dated 22.09.2017. The following are their main contentions:

- 1) Most of the allegations in the petition are not true and the application is not maintainable under law or facts. Mr. Srujan Garapati, though he was elevated to the post of Managing Director of the Company from September 2015, and he has been associated with the petitioner/Applicant with effect from 01.01.2014 and claimed to have funded in the form of equity and unsecured loan towards the contribution required by the then promoters of the Applicant.
- 2) The Company/petitioner had declared COD (Commercial Operation Date) of Unit II on 13.01.2015. However, the Consortium Banks are having first charge on the Unit No. II (besides Unit No I, Power Plant, etc) and the Plant and machinery is hypothecated to consortium Banks. Though company is claiming to have dismantled the Unit II in April 2015, the Applicant has neither taken permission nor approval from the Consortium Banks who are having first charge on the said machinery for dismantling of the Unit No II which amounts to not only violation of the terms and conditions of the agreements, but also amounts to criminal breach of Trust. After dismantling the Unit II, there are more than four consortium meetings (i.e., on 27.05.2015, 26.06.2015, 13.08.2015, 29.09.2015) were called on different date at different places, but in none of the said meetings the new Management of the Applicant has informed the consortium banks about dismantling of machinery rather confirmed that the unit is running, till the consortium banks themselves noticed during their joint visit of factory site on 04.11.2015. It is a gross violation and breach of trust where the new management even after being fully aware that the assets are financed and owned by the Corporate Creditors / lenders, didn't inform and hid the said fact.



- 3) The Consortium banks decided to submit the restructuring proposal in following lines;

Parameter	Requested by the Company	Views of the member Banks
Cut off date of the proposal	01 st November 2014	30 th March 2015
Rate of interest on restructuring package	12%	14% (Base rate of the lead bank + 4%)
Postponement of repayment period for existing term loans	From quarter ending March 2015 to quarter ending December 2016. Hence the first instalment will fall due in December 2016.	Agreed to take up the matter with Competent Sanctioning Authority.
Modified repayment schedule for existing term loans	34 structured quarterly instalments commencing December 2016.	Agreed to take up the matter with Competent Sanctioning Authority.
Approval of FITL for servicing interest for the period	18 months from April 2015 to September 2016.	Agreed to take up the matter with Competent Sanctioning Authority.
Interest on FITL	To be serviced as and when due.	Agreed to take up the matter with Competent Sanctioning Authority.



Repayment of FITL	24 quarterly instalments commencing from December 2016.	Agreed to take up the matter with Competent Sanctioning Authority.
Replacement of property	Company requested replacement of one of the collateral securities held in the name of Mrs. Rajasree Mishra with fresh property of equal value in the name of Mr. Garapati	Not accepted.
Fresh personal guarantee of Mr. SrujanGarapati	Not offered	Personal guarantee of Mr. Srujan is mandatory.
Additional collateral security looking at Bankers additional exposure by way of FITL.	Not offered.	Company to explore possibility for additional collateral security.



The Consortium banks agreed to take up the restructuring proposal on above lines to their competent authority subject to the following;

- The Company must crystallise the amount and time to operationalise the power unit. The same to be vetted by LIE and one of the empanelled Engineers of the member banks.
- The Company/investor must submit a concrete plan for implementation of the incomplete work along with cash flow for infusion of funds latest by 31st May 2015.

- Company must clear overdue to the all the member banks till the cut off date as mentioned above.
 - The investor may bring in the funds required by way of unsecured loan after giving a subordination agreement on the Company's USL (Unsecured Loans) over the Bank's loans. No interest on the USL to be paid during the currency of the USL.
- 4) The present Managing Director of the petitioner company informed in the JLF meeting dated.26.06.2015 that they are making arrangement for adjustment of critical overdue with the member banks latest by 30.06.2015. The Leader of Consortium also highlighted in the JLF meeting dated 26.06.2015 the viability of restructure depends on timely completion of the balance works and the Applicant needs to submit the month wise schedule of work to be completed from July 2015 to December 2015. The Consortium Banks have taken up with the Competent Sanctioning Authority along with the various reports such as LIE report, and the recommendations of the Branch, Controlling office and this process usually takes 3 to 4 months. On the basis of reports and recommendation, the Competent Sanctioning Authority of the respective consortium Banks approved the restructuring proposal and in order to avoid the delay in implementing the restructuring package, the member banks have also permitted initially for taking individual documentation pending joint consortium documentation for implementation of Restructuring package.
- 5) It is stated that it is a condition precedent that the Company shall pay the over dues in Term Loan accounts for implementation of Restructure package. Therefore the Company cannot take it advantage the payment of Rs.6.93 crores towards first loan instalment and overdue interest
- 6) As per the covenants of the loan documents, it is responsibility of the promoters of the Company to bring additional funds for cost-overrun etc, and they cannot claim that the consortium banks shall give additions finance as a matter of right.
- 7) It is stated that the consortium Banks were shocked to note when they have made inspection of the Project site on 04.11.2015 that the Paper Unit II has been dismantled. While pursuing the Restructuring package

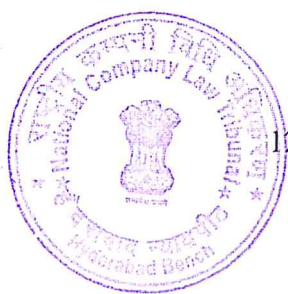


with the Consortium banks from March'2015 to 04.11.2015, they have suppressed the said material fact with oblique motive to draw the working capital facilities.

- 8) The Company has to clear the critical over dues in the restructured account to seek any further help to continue the financial assistance from the consortium Banks. The Company and its promoters (New and Old) failed to ensure the repayment of the dues in accordance with the terms and conditions of the restructured documents and also failed to maintain sufficient stocks and inventory to match the drawing Power. The Applicant also failed to arrange the funds for payment of the devolved LCs. It is a responsibility of the Company, its Directors, promoters to bring the additional resources from their own source to meet the commitments for payment of the dues to the consortium Banks. And Company has expressed its inability to make payment and upgrade the account with lenders prior to implementation of restructuring package.
- 9) The consortium banks have refunded/ adjusted the amount as requested by the company duly following the procedures and upon completing the terms agreed by the company.
- 10) It is stated that Consortium banks have made it clear that the Company has to start production in Unit No I from its own cost by infusing the required funds and the consortium Banks would consider holding on operation with reasonable cutback and company has to replace the collateral securities situated at Vishakhapatnam (which is reported to be the fake property) with an alternative property of equivalent value. And the Company has to submit ABS (audited balance sheet) for FY 2015-16 and PBS for FY 2016-17, and the Applicant to bring back all the equipment to the site which is presently lying with the vendors. It is submitted that the Applicant has not taken any steps to restart the production of Unit No I or other points suggested by the consortium Banks.
- 11) It is also stated that sundry debtors/Receivable Rs. 67.61 Cr.as claimed by the Company are susceptible, basing on enquiries made by the Banks. The statement of Debtors filed by the Company as of 16.08.2017 under SL No 6 M/s Sree Sai Gopal Paper Mills Ltd owes

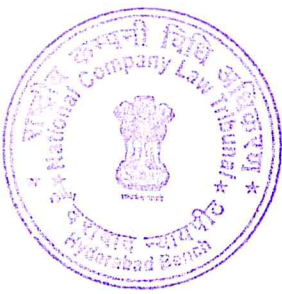


the company an amount of Rs 4,08,62,828/-. On verification of their records in the Ministry of Company Affairs (MCA) website it appears that the address of the said Company and petitioner Company are located in the same place (i.e., No 404, 4th Floor, 7-1-58, Concourse Green lands Road, Ameerpet, Hyderabad) which further gives suspicious in nature. Further some of the debtors viz. M/s Sree Sai Gopal Paper Mills Limited, M/s Shiva Ganesh Paper Agencies Pvt Ltd, M/s Excel Stationeries Limited, M/s Exopack Industries Pvt Ltd, M/s SVPCL Limited who owe substantial amount to the company are verified in MCA website reveals that they are not filing their balance sheet and last Balance sheet filed with MCA(Ministry of Corporate Affairs) dates back to 31.03.2011 / 31.03.2012. Given this background how the company is reporting these companies under receivables gives further suspicion about claim of the company. It is submitted that M/s Excel Stationeries Limited, and M/s. SVCPL Limited are NPA accounts and OA No.1045/2013 and 1061/2013 filed by International Asset Reconstruction Limited before Debts Recovery Tribunal, Hyderabad and the same was decreed on 01.12.2016 and 03.03.2017 respectively.



- 12) It is stated that the present MD of Company Mr. Srujan Garapati, a part of being a SAP Qualified Engineer, was also supposed to be a seasoned Industrialist as he is MD of M/s Navoga Industries Pvt. Ltd and other concerns, cannot claim to run the Company without understanding the nature of business and present financial status of the Company.
- 13) .It is stated that , the Consortium Banks have always been supportive to the Company and have implemented the restructuring proposal in time. The delay of 3 to 4 months may not be unusual considering the 5 banks Consortium and also where other external agencies are also engaged to submit their report for various technical feasibility studies done by them being an integral part of the restructuring proposal. Their request dated 16.05.2016 for additional funding was also discussed and considered positively by the lenders in their meeting dated 17.05.2016 and was decided to assign for the various studies including Engineering audit and TEV as a process initiation

- 14) They have mentioned two incidents of fraudulent nature, one i.e., submission of fake insurance policy dated 30.10.2015 occurred after the new Management officially taken full control of the Company on 24.09.2015. The other incident of offering fraudulent collateral situated at Vishakhapatnam was occurred before the new Management officially took charge , but it was happened during was unofficially associated with the company affairs as an investor (Ref MOU dated 20.01.2015) and also as a prospective Director of the company attending various JLF meetings.
- 15) It is stated that the insurance policy No.433800/11/2016/287 dt.30.10.2015 for the period 30.10.2015 to 29.10.2016 submitted by the Company claiming to have taken insurance policy from The Oriental Insurance Company Ltd having insured the Building, P&M and Stocks for Rs.191.00 crores , on verification found to be fake. They are taking appropriate steps in this regard..The present MD of Company cannot disown the above fraud.
- 16) So the above issue were discussed in the consortium meeting held on 12.06.2017, and advised the Company to offer an alternate collateral with sufficient value, within maximum period 15 days to the satisfaction of the Consortium Banks, which otherwise would take its own appropriate recourse. In spite of the above timeline, the Company could not replace the security. In the JLF meeting held on 04.08.2017, the Consortium Banks finally decided "To declare the A/c as a Fraud on account of submission of fake Insurance and fraudulent collateral property by the company". And in the subsequent JLF meeting decided to take approval from their competent authorities to report the account under Fraud to Reserve Bank of India.
- 17) It is submitted that as per the Lenders' Engineer report (LIE) (P 456 to 519), submitted by Dun & Bradstreet an independent agency there were many deficiencies on status of Plant & Machineries. However the further outcomes of Engineering Audit (LIE) mentioning a considerable amount of machinery is not available at the factory site, and also coupled with fraudulent transactions surfaced thereafter, there was no other way before the Consortium Banks' but to back and to initiate recovery measures and report the transaction as fraud.



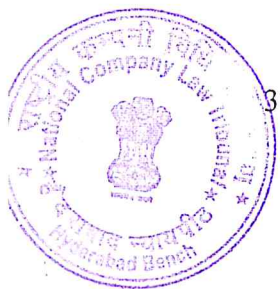
18) It is therefore, submitted that petitioner has not come with bonafide intention and the petition is filed to take shelter to avail protection under the Code as to circumvent the proceedings which may be initiated by the Consortium Banks under applicable Law for enforcement of Securities and recover of its dues. The Consortium bankers are no longer interested to fund anything further and are interested to enforce its security for recovery of its dues; it is also an admitted fact that the present Board of Directors expressed their inability to fund from their own sources for the revival of the unit and to restart the production. Under above circumstances, in the Consortium meeting held on 04-09-2017, the members of the Consortium delegated power to the Lead Bank, Union Bank of India to take necessary steps and initiate legal action for recovery of its dues. It is alleged that the present litigation is a gross abuse of process of law and it deserves no consideration. Therefore, the petition liable to be dismissed.

27. Heard Shri Sandeep Reddy Sama, Learned Counsel for the Petitioner and Shri V. Sethu Madhava Rao along with Shri Ameer Babu, Chief Manager, Union Bank of India and perused all the material papers filed.



28. The Learned Counsel for the Petitioner submits that the Petitioner has complied with all the requisite conditions as prescribed under the provisions of Section 10 of IBC, 2016 such as there is admitted debt and default as mentioned in the petition, the petition is filed in prescribed form with all relevant details accompanied by prescribed fees, furnished the details propose Interim Resolution Professional namely Shri R. Ramakrishna Gupta, CS, who is duly qualified and is not involved in any other insolvency proceedings and filed his written consent in prescribed format. He further submit that the present management led by the present MD is continuously prosecuting the issue by attending all the Consortium Bank meetings held from to time and co-operated with them and thus the present management is under the hope that the Banks would assist it for reviving the Company.

29. He further submitted details of history of case as to how the present management has inherited the debt ridden Company and explained as to the present management is trying to revive the Company. The Banking authorities knows financial status of the Company under the old management and under the old management only, filing of fake Insurance policy and fake mortgaged property documents were furnished and there is a clear record to prove that. As asked by the Bankers to substitute fake mortgaged property submitted by the previous management, the petitioner has expressed its readiness to provide it and at the same time, the Company requested to assist the Company for revival at the earliest possible time. As the Bankers have not come forwarded with appropriate assistance at the relevant point of time, the Company undergoing serious financial distress. However, the Bankers are now justifying their delay as routine affair. The series of JLF meetings held clearly show that the present management is bonafidely prosecuting the issue with the Bankers. Therefore, he appealed to the Tribunal to give the petitioner an opportunity for the revival of the Company to convince the Financial Creditors under the aegis of this Tribunal. The petitioner has duly complied with section 10(1)(2)(3) as to admit the case under section 10(4)(a) of IBC, 2016 and consequently initiate CIRP, appointment of IRP, declaration of moratorium under the Code.



30. Shri V. Sethu Madhava Rao, the learned counsel for the respondent along with Shri Ameer Babu, Chief Manager, UnionBankofIndia, while reiterating various contentions raised in their reply dated 22.09.17 as briefly given supra, have further stated that new Management is not co-operating in resolving the issue, even though they have tried their level best for revival of the Company. The New management has failed to adhere to conditions imposed by the Bankers. Though the submissions of fake insurance police and fake mortgage title deeds happened during the old management, it is the duty of present management to take remedial steps so as to convince the Bankers its bonafides. Therefore, they are interested for recovery proceedings instead of CIRP under the Code. Ultimately, the learned counsel for the respondents did not oppose the present Company Petition and for appointment of IRP.

31. We have carefully considered the pleadings of both the parties and perused all the material papers filed in their support along extant provisions of IBC. The object of Code is to consolidate and amend the laws relating to re-organisation and Insolvency Resolution of Corporate Persons, partnership firms and individuals in time bound manner for maximisation of value of asset of such persons to promote entrepreneurship, availability of credit and balance the interests of all stakeholder including alteration in the order of priority of payment of Government due etc.
32. In the instant case, as detailed supra, the accounts of the Company is already declared NPA and considering the financial distress of the Company, the reins of Company given to the new management basing on interest shown by strategic investor. And the Banks have also held consultations with the new management by holding several meetings known as JLFs as explained by the parties. It is only under the provisions of IBC, either for Resolution plan or liquidation has to be undertaken. As per the objects of the Code as explained supra, a serious effort has to be made both by the Company and Financial creditors for revival of the Company by way of resolution plan, failing which; of course, leads to liquidation of the Company. As detailed supra, both the parties have made so much exercise for revival of the Company and it prima facie appears that there are some bottlenecks on the part of both parties. The Petitioner Company is stated to have postponing its commitments as agreed upon during JLF. Anyway, initiating CIRP under the Code would not in any way effect the rights of respondents and it has every power/authority as major financial creditors over the CIRP even to continue IRP or not. On the other hand, it will facilitate to resolve the issue once for all. Hence, admitting the case and initiating CIRP under the Code would not prejudice the interests of Consortium Banks.
33. In the light of above discussion of the case, we are convinced that the present Petitioner fulfils all the requisite conditions as prescribed under provisions of Section 10 of IBC. Therefore, it is a fit case for admission to initiate CIRP in respect of M/s Sri Vinayaka Paper & Boards Limited under the provisions of IBC.



34. In the result, the Company Petition bearing CP(IB) No.52/9/HDB/2017 is admitted by invoking powers conferred on this Tribunal/Adjudicating Authority under section 10(4) of IBC, and by invoking the powers conferred under Sections 10,12,13,14,15,16, 17, 18, 19, 20, 21, 22 and 25 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016, we passed the following orders :-

- 1) We hereby declared the following Moratorium by prohibiting the following actions:-
 - 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002)
 - d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
 - e) Supply of essential goods or services to Corporate Debtor shall not be terminated or suspended and interrupted during the moratorium period.
- 2) Direct to cause a public announcement of the initiation of Corporate Insolvency Resolution Process immediately as prescribed under section 15 (1) and (2) of Insolvency and Bankruptcy Code, 2016, on www.ibbi.gov.in (designated website of Insolvency and Bankruptcy Board of India, circulated vide IIBI/IP/PUBLIC ANN/221 dated 01.02.2017) in addition to other accepted modes of publication immediately and call for submission of claims as per Section 15 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)



Regulations, 2016. The Company is also directed to publish the same in their Official website.

- 3) We hereby appointed Shri R. Ramakrishna Gupta (Certificate No. IBBI/IPA-002/IP-N00012/2016-17/10029), # R/o T-202, Technopolis, 1-10-74/B, Chikoti Gardens, Begumpet, Hyderabad - 500016 as Interim Resolution Professional by exercising powers under section 16 of IBC, 2016;
- 4) We hereby direct the Interim Resolution Professional to constitute a Committee of Creditors, after collation of all claims received against the Corporate Debtor and determination of financial position of Corporate Debtor, as per Section 21 of IBC. The First meeting of the committee of creditors, shall be held within 7 days of the constitution of committee of creditors and their decision has to be communicated to the Tribunal as per Section 22 of the IBC.
- 5) Direct the personnel of M/s Sri Vinayaka Paper & Boards Limited and its promoters or any other person associated with the management of M/s Sri Vinayaka Paper & Boards Limited, and also the Consortium Banks/respondents to assist and cooperate with Interim Resolution Professional to provide access to documents and records and management of the affairs of the Company.
- 6) We direct the Interim resolution professional to strictly adhere to all extant provisions of the Insolvency and Bankruptcy Code, 2016 and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and shall report his actions promptly to this Tribunal by way of sworn affidavit(s) from time to time by duly furnishing those copies of affidavits to both the parties.
- 7) Post the case on 24.10.2017 for report of IRP.



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CERTIFIED TRUE COPY**

केस संख्या
CASE NUMBER C.P.(IB) No. 173/16
निर्णय का तारीख 22.9.2017
DATE OF JUDGEMENT
प्रति लेकर किया गया तारीख
COPY MADE READY ON 25-9-2017

Sd/-
Ravikumar Duraisamy
Member (Technical)

Sd/-
Rajeswara Rao Vittanala
Member (Judicial)

for Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench