

Bench No. I

NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

T.P.No. 09/KB/2017

Present: Hon'ble Member (J) Shri Vijai Pratap Singh

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 2<sup>nd</sup> August, 2017, 10.30 A.M

Name of the Company	Shantinath Commercial Pvt.Ltd. -Versus- Tantia Construction Ltd.		
Under Section	271/272		
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

KAPURCHAND GARG, Advocate } Petitioner  
SUNITA AGARWAL Advocate }

*(Signature)*  
2/8/17

2. Nupur Jain  
Sanjay Baid  
Sandeep Singh } Tantia

*(Signature)*

3. Jishnu Choudhary, Adv  
Nataraja Roy, Adv  
Swati Agarwal, Adv  
Anima Ban, Adv } Consortium of banks

*(Signature)*  
2/8/17

ORDER

Ld. Counsels for the petitioners and the Ld. Counsels for the consortium banks are present.

Ld. Counsel for the consortium banks informed that winding up petition against the same company is pending before the Hon'ble Calcutta High Court, which is listed on 04/08/2017.

Tantia

Ld. Counsel for the consortium of bank has submitted that several winding up petitions i.e. CP 366/2011, CP 64/2015, CP 550/2015, CA 99/2016, CP 243/2016, CP 248/2016, CP 267/2016, CP 324/2016, CP 472/2016, CP 530/2016, CP 561/2016, CP 630/2015, CP 632/2015, CP 737/2015, CA 343/2016 [CP 587/2015], CP 366/2016, CP 429/2016, CA541/2016[CP 763/2015], CP 460/2015, CP 610/2015, CP657/2015, CP 658/2015, CP 660/2015, CP 662/2015, CP 664/2015, CP 666/2015, CP 667/2015, CP 668/2015, CP 669/2015, CP 670/2015, CP 792/2015 and CP 857/2016 are pending before the Hon'ble Calcutta High Court against the same company, Tantia Constructions Ltd., wherein the Hon'ble Calcutta High Court by its order dated 03/03/2017 has fixed June 16, 2017 for the State Bank to indicate the status of the company, its financial position and the further course of action to be adopted by the consortium of banks.

Ld. Counsel on behalf of the State Bank of India submitted that it is lead bank of the consortium of banks, whose exposure in the company is in excess of Rs. 1,000 Crores. Ld. Counsel further submitted that a CDR Scheme has been put into place and the same is being monitored by the State Bank and auditors appointed by the banks and State Bank is one of the members of the consortium. He

further submitted that consortium of bank lead by State Bank does not support the prayer of winding up of the company. However, if it is indicative that the conditional CDR Schemed does not reveal satisfactory improvement in the financial condition of the company, the State Bank and the consortium may seek to take control of the assets of the company to the extent they are secured in favour of the banks.

Keeping in view all these consideration the Hon'ble Calcutta High Court has passed the following order on 03/03/2017:

*"Let these creditors' petitions now appear on June 16, 2017 for the State Bank to indicate the status of the company, its financial position and the further course of action to be adopted by the consortium of banks. In the unlikely event the CDR scheme is dropped and the consortium of banks seeks to proceed against the securities of the company in liquidation, liberty is given to the State Bank to mention the matter upon notice to the company and its creditors for the creditors' petitions to be listed earlier."*

This winding up petition has also been transferred from the Hon'ble Calcutta High Court against the same company, the character of the winding up petition always remains of a representative suit, wherein concerned parties if affected may come and join. As per the Government notification dated 7th December, 2016 all winding up petition which has been filed on the ground of inability to pay debt under Section 433, clause (e) of the Act where the petition has not



been served on the respondent, shall be transferred to the Bench of the Tribunal and shall be treated as applications under Sections 7, 8 and 9 of the IBC 2016.

In this case if this petition is admitted under the Insolvency and Bankruptcy Code, 2016 and any order is passed then indirectly it will be an interference in the jurisdiction of the Hon'ble Calcutta High Court which is exercising its jurisdiction in the winding up petitions against the same Company. So in the circumstances mentioned above it is necessary to adjourn this proceeding and wait for the order of the Hon'ble Calcutta High Court in winding up petition, i.e. C.P.No. 366/2011.

In the circumstances mentioned above it is necessary to hear the parties on the ground of maintainability of this petition in this Court.

In the circumstances the case is adjourned for 01/09/2017.

  
(Vijai Pratap Singh)  
Member (J)