

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

*(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)*

C.P. (IB) No.188/BB/2019

U/s 7 of I&B Code, 2016

R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of:

1. Brig. E.S. Krishnamurthy

(On behalf of himself and others)

Flat No.D-320, Athashri Apartment

6th Cross Road, (Athashri Road)

Prithvi Layout, Whitefield,

Bangalore – 560 066.

& 82 Ors.

...

Petitioners / Financial Creditors

VERSUS

M/s. Bharath Hi-Tecch Builders Pvt. Ltd.

304 and 306, 3rd Floor, Gold Tower,

No.50, Residency Road,

Bangalore – 560 025.

...

Respondent / Corporate Debtor

Order delivered on: 28th February, 2023

Coram:

1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)

2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Petitioners : Shri Srijan Sinha, Adv.

For the Respondent : Shri Sandeep Bajaj a/w Shri Devansh jain, Adv.

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present Petition has been filed on 26.04.2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by

Brig. E.S. Krishnamurthy & 82 others (hereinafter referred to as ‘Petitioners / Financial Creditors’) with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) in respect of **M/s. Bharath Hi-Tecch Builders Private Limited** (hereinafter referred to as ‘Respondent / Corporate Debtor’).

2. The Respondent Company - the Corporate Debtor, was incorporated on 17.07.1984 with CIN No. U45201KA1984PTC112870 with its registered office situated at # 304 and 306, 3rd Floor, Gold Tower, No.50, Residency Road, Bengaluru-560025. Hence, the jurisdiction lies with this Adjudicating Authority. Its Nominal Share Capital is Rs.7,00,00,000/- (Rupees Seven Crores Only) and Paid-up Share Capital is Rs.5,81,97,500/- (Rupees Five Crores Eighty-One Lakhs Ninety-Seven Thousand Five Hundred Only).
3. This Petition which was filed under Section 7 of the Code was disposed of by this Adjudicating Authority in CP (IB) No.188/BB/2019 on 28.02.2020 with the direction that the Corporate Debtor was to settle the claim of the homebuyers within a period of three months. Liberty was also granted to the Petitioners to approach the Tribunal again in accordance with Law. Some of the Petitioners in the original Company Petition along with some others filed an Appeal before the Hon’ble NCLAT which dismissed the same in order dated 30.07.2020 in Company Appeal (AT) (Insolvency) No.649 of 2020. Again the Petitioners preferred Appeal before the Hon’ble Apex Court and in order dated 14.12.2021 in Civil Appeal No.3325 of 2020, the Hon’ble Apex Court has set aside the aforesaid order of the Hon’ble NCLAT dated 30.07.2020 and of this Tribunal dated 28.02.2020; and the Company Petition bearing CP (IB) No.188/BB/2019 was accordingly restored to the NCLT for disposal afresh.
4. Brief facts of the Petition are given hereunder:
 - (a) The present Petition has been preferred by Brig. Krishnamurthy, for himself and on behalf of other 82 Financial Creditors as specified in Annexure-1 of the CP against M/s. Bharath Hi-Tecch Builders Pvt. Ltd., the Corporate Debtor herein.

- (b) A Master Agreement to Sell dated 22.06.2014 was entered between the Corporate Debtor, IDBI Trusteeship Limited and Karvy Realty (India) Ltd. (hereinafter referred to as the 'Facility Agent') to raise Rs.50 Crores for development of 100 acres of agricultural lands in Bagepalli Village, Chikkaballapur Taluk (hereinafter referred to as the 'proposed residential layout') by selling the plots to the prospective purchasers through the Facility Agent. Accordingly, in terms of the above said Master Agreement to Sell, the Financial Creditors whose names are mentioned at Annexure-IV(a) of the CP, have executed Deeds of Adherence / Letter of Intent addressed to / executed with the Corporate Debtor through the Facility Agent. As per the said Master Agreement to Sell the Corporate Debtor was under an obligation to convey and register the plots to the Financial Creditors within 21 months.
- (c) As the Corporate Debtor failed to raise funds for the Project, it decided to raise loans through Karvy, and accordingly a Syndicated Loan Agreement (SLA) dated 22.11.2014 was executed for an amount of Rs.18 Crores. As per this SLA, the Corporate Debtor was to pay interest @ 20% per annum to the Financial Creditors / Lenders. The tenure of this loan was 24 months from the date of SLA.
- (d) The Corporate Debtor *vide* letter dated 29.02.2016 requested the Financial Creditors for extension of time for conveying the Plots till 31.10.2016, failing which, it shall return the entire amount paid by the Financial Creditors along with the interest @ 25% per annum on the money received from the Financial Creditors.
- (e) However, the Corporate Debtor requested extending the term of the Syndicate Loan Agreement seeking extra time of 12 months, by letter dated 30.11.2016 to the Financial Creditors proposing as under:
- i. Interest due till 30.11.2016 – to be paid
 - ii. Principal extension period – 12 months
 - iii. Interest Rate – 20% per annum
 - iv. Interest Payment – Quarterly

v. Principal Redemption – In 3 equal instalments in the 13th, 14th and 15th month. However, the Corporate Debtor defaulted in making the above payment also.

(f) In total the Financial Creditors under the Master Agreement to Sell dated 22.06.2014 r/w the extension letter dated 29.02.2016 and the Syndicate Loan Agreement dated 22.11.2014 r/w the extension letter dated 30.11.2016, had lent to the Corporate Debtor a financial debt to the tune of Rs.15,17,00,000/- (Rupees Fifteen Crore Seventeen Lakh only). Further, as on 31.03.2019, a total sum of Rs.33,84,32,493/- was defaulted by the Corporate Debtor which sum was arrived at after adjusting the amount of Rs.81,23,761/- received from the Corporate Debtor by the Financial Creditors at various dates.

(g) It is submitted that the debt, in the instant case is a ‘financial debt’ in terms of Section 5(8) of the Code and the Applicants are Financial Creditors in terms of Section 5(7) r/w Section 5(8)(a) and Section 5(8)(f) of the Code. Therefore, in view of the default by the Corporate Debtor in repayment of the outstanding financial debt, the Financial Creditors (represented by Brig. E.S. Krishnamurthy) filed the instant application.

5. In support of its submissions, the Petitioners *inter alia* filed the following documents, in respect of all the persons making this Application u/s 7 of the Code:

(a) Copy of the Master Agreement to Sell dated 22.06.2014 entered into between the Corporate Debtor, the Facility Agent and IDBI Trusteeship Services Ltd.

(b) Copies of the Deeds of Adherence / Letter of Intent executed by Financial Creditors under the Master Agreement to Sell dated 22.06.2014 along with the letter of extension dated 25.02.2016 issued by the Corporate Debtor.

(c) Copy of the Syndicate Loan Agreement dated 22.11.2014 entered into between the Corporate Debtor, the Facility Agent and IDBI Trusteeship Services Ltd.

(d) Copies of the Deeds of Adherence / Letter of Intent executed by the Financial Creditors under the Syndicate Loan Agreement dated 22.11.2014.

- (e) Copy of the Extension Letter dated 30.11.2016 issued by the Corporate Debtor to all the Financial Creditors.
6. During the fresh proceedings after restoration of this case, the Petitioners have filed an Affidavit *vide* Diary No.2275 dated 26.05.2022 stating as under:
- (a) It is stated that in the proceedings before the Hon'ble Apex Court, the Respondents had admitted that the Petitioners had invested money in the Company, however called them as 'speculative investors'. The Respondent admitted to the existence of the Master Agreement to Sell and Syndicated Loan Agreement between the Petitioners and themselves, thereby establishing the privity of contract. It is further pointed out that in the settlement acknowledgement letters with three Financial Creditors, it was categorically noted by the Respondents that all 'Dues' as 'owed' by the Respondents stood settled by making one-time payment.
- (b) It is stated that the instant Section 7 Petition satisfies the preconditions of an admission u/s 7(5)(a) of the Code read with Regulation 8(2)(b)(i) and (ii) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, and a 'financial debt' has been established accordingly. In the instant Petition both forms of proof including a contractual relationship in the nature of a Syndicated Loan Agreement, a Master Agreement to Sell and corresponding Deeds of Adherence between the Petitioners and the Corporate Debtor coupled with acknowledgement of debt by the Corporate Debtor was placed on record at pages 126-573 r/w pages 97-125 and 21-42 of the Petition.
- (c) As per Article 4 of the Syndicated Loan Agreement r/w the Deed of Adherence, the contractual relationship between the Petitioners and the Corporate Debtor is that of a Lender and a Borrower. This qualifies as a 'financial debt' u/s 5(8)(a) of the Code. Further, some of the Petitioners are covered by the Master Agreement to Sell r/w their respective Deeds of Adherence, which qualifies them as a financial creditor u/s 5(8)(f) of the Code. Apart from an existence of

debt u/s 3(11) r/w Section 5(8) of the Code, the Petition further enclosed the proof of admission of default by the Corporate Debtor at Pages 43-94 and at pages 126-573 of the CP.

- (d) It is stated that the order dated 28.02.2020 passed by this Adjudicating Authority recorded the terms of settlement between the Respondent and some of the Creditors. The terms of the settlement categorically recorded an admission on the part of the Respondent that certain some of monies are due in favour of the Creditor and the same are being settled by a one-time payment. The settlement terms further recorded that some payments have been made by the Respondent 'towards principle'. Therefore, the Respondent has already admitted before this Tribunal that certain monies are owed by it in favour of the Creditors.
- (e) The contention of the Corporate Debtor is that the Master Agreement to Sell and the Syndicated Loan Agreement was between the Corporate Debtor, IDBI Trusteeship and the Karvy and not with the Financial Creditors. However, subsequent to the payment made by the Petitioner directly in the Corporate Debtor's Account, the Corporate Debtor acknowledged the receipt of the 'financial facility' as per the SLA as under:

"We refer to the abovementioned DOA and confirm the receipt of Financial Facility of an amount of Rs.15,00,000/- (Rupees Fifteen Lakhs Only) paid by you in relation to the Syndicated Loan Agreement. Please note that your lender number is Sector VII Plot 23....."

We also acknowledge that the Syndicated Loan Agreement / Deed of Adherence entitle you, at your discretion (as a lender), to purchase specific plot/s (in lieu of principal and loan amount)...."

- (f) It is further explained that the Corporate Debtor has suppressed some information that the SLA also refers to the Lenders / Financial Creditors who are the Applicants herein. The Facility Agent was merely acting on behalf of the Lenders. Therefore, the claim that the SLA created a relationship between the Respondent and the Facility Agent is not occurred. Further, it is reiterated that various documents stated above which were signed and stamped by the

Respondents clearly establish that there was a contract between the Petitioners and the Respondent.

(g) It is further clarified that the Respondent in its letter dated 30.11.2016 issued to all the Lenders under the SLA has admitted that it has defaulted in repayment of Principal as well as Interest and requested for extension of the repayment period by twelve months. Thus there is an admission to the default by the Respondent. The fact that they agreed for the settlement with all the Applicants also confirms the same, for which they specifically expressed the desire to settle before this Tribunal as recorded in order dated 28.02.2020.

7. In compliance to the order dated 28.07.2022, the Respondent filed Additional Affidavit *vide* Diary No.4883 dated 15.11.2022, *inter alia* contended that the total number of Allottees in respect of the Project being developed by the Corporate Debtor at Bagepalli are 660 and were 660 even on the date of filing of the CP. Further, the instant Petition is not maintainable as out of the alleged 83 allottees named in the Memo of Parties, 27 Applicants have settled with the Corporate Debtor and have undertaken / agreed to withdraw from the captioned proceedings. Copies of withdrawal / settlement letters issued by these 27 Applicants are placed on record as Annexure-A/2 (Colly.). Accordingly, it was stated that the CP should be dismissed.
8. In response to the above, the Petitioner filed rejoinder affidavit *vide* Diary No.4681 dated 02.11.2022, by *inter alia* stating that the Respondent in its affidavit has admitted that as on the date of filing of the Petition there were 660 investors through the Karvy scheme and the Petition was filed by 83 such Petitioners. In this regard, it is stated that with respect to the number of total investors as claimed by the Respondent is concerned, the same is incorrect, as in the list annexed by the Respondent several repetitions have been made and therefore the actual number of investors is 629 and not 660, as claimed by the Respondent. Therefore, the Petition has been filed by 13.19% out of the total number of investors.

9. Furthermore, with respect to the ground raised by the Respondent that in light of 27 Petitioners having settled their dispute with the Respondent, the present Petition is not maintainable, it is stated that the said submission is contrary to the law settled by the Hon'ble Apex Court in *Manish Kumar v. Union of India & Ors. reported in (2021) 5 SCC 1*, wherein the Hon'ble Court while upholding the amendment to Section 7, *inter alia* made the following observation at para 181, which is reproduced hereunder:

*“181. In the matter of presentation of an application under Section 7, if the threshold requirement, under the impugned provisos, stands fulfilled, the requirement of the law must be treated as fulfilled. The contention, relating to the ambiguity and consequent unworkability and the resultant arbitrariness, is clearly untenable and does not appeal to us. **If an allottee is able to, in other words, satisfy the requirements, as on the date of the presentation, the requirement of the impugned law is fulfilled.**”*

From the above, the Hon'ble Apex Court in quite unequivocal terms has held that the threshold of 10% as provided for under the proviso to Section 7 of the Code, is only to be met at the time of filing of the petition, and any subsequent withdrawal by any of the Petitioners or settlement thereof, will not have any effect on the maintainability of the Petition.

It is the Respondent's own admission that the total number of Petitioners on the date of filing of the Petition were 83, and on the date of filing of the Petition the total number of investors were 660. Therefore, even as per the Respondent's own admission, on the date of filing of the Petition, 12.57% of the total number of investors filed the Petitioner, therefore meeting the threshold limit of 10%. And any subsequent withdrawals by any of the other co-petitioners does not impact the other 56 Petitioners, and thus in view of the law laid down by the Hon'ble Apex Court, the instant CP is maintainable.

10. Subsequently, in pursuant to the order of this Adjudicating Authority dated 21.12.2022, the Petitioners have filed written submissions *vide* Diary No.5703 dated 27.12.2022, by *inter alia* further stating as under:

- (a) As per Article 4 of the Syndicate Loan Agreement dated 22.11.2014 (SLA) read with the Deed of Adherence, along with the letter of acknowledgement it is clear that the contractual relationship between the Petitioners and the Corporate Debtor is that of a Lender and a Borrower. This qualifies as a financial debt u/s 5(8)(a) of the Code. Some of the Financial Creditors are covered by the Master Agreement to Sell dated 22.06.2014 (MSA) read with their respective Deed of Adherence, which qualifies them as financial creditors u/s 5(8)(f) of the Code.
- (b) As per the terms of the MSA the Corporate Debtor was supposed to hand-over the physical possession of the plot by 22.03.2016. However, the Corporate Debtor issued a letter dated 29.02.2016 to the concerned Financial Creditors under the MSA accepting the default and extended the time to deliver the plot to 31.10.2016. Further, *vide* letter dated 30.11.2016, the Corporate Debtor requested for extension of the terms of the SLA for another 12 months and further agreed to pay an additional interest from 30.11.2016. In this letter, Corporate Debtor admitted that it has defaulted in repayment of the principal as well as interest amount.
- (c) It is stated that the reliance placed on the judgment titled *Shubha Sharma v. Mansi Brar Fernandes & Anr., CA (AT) (Ins) No.83 of 2020*, by the Corporate Debtor is misplaced on two counts. Firstly, out of 83 Financial Creditors there are only six Financial Creditors, who are covered u/s 5(8)(f) of the Code. Rest 77 Petitioners are covered under the definition as provided u/s 5(8)(a) and to them the said Judgment does not apply. Secondly, the said Petitioners are not using the IBC as a recovery tool. Hence, Financial Creditors herein cannot be considered as speculative investor but are genuine investors u/s 5(8)(a) of the Code. Further, Corporate Debtor themselves have offered return of investments, therefore, principle of promissory estoppel also applies.
- (d) Further, the Petitioners has relied upon the following judgments:
- i. *Innoventive Industries Ltd. v. ICICI Bank & Anr. (2018) 1 SCC 407;*

- ii. *E.S. Krishnamurthy & Ors. v. Bharath Hi-Tecch Builders (P) Ltd. (2022) 3 SCC 161;*
- iii. *Nikhil Mehta & Sons v. AMR Infrastructure Ltd., CA (AT) (Ins.) 07 of 2017;*
- iv. *Rajendra Kumar Saxena v. Earth Gracia Buildcon Pvt. Ltd., (2018) SCC OnLine NCLAT 711;*
- v. *Manish Kumar v. Union of India & Anr., (2021) 5 SCC 1.*

11. The Respondent also filed its written arguments *vide* Diary No.29 dated 03.01.2023, by further contending as under:

- (a) It is contended that only on account of the fact that Karvy failed to fulfil its commitment of paying Rs.50 Crore to the Corporate Debtor within a span of six months as per the Agreement between the Parties, there was a delay in the Bagepalli Project.
- (b) The Applicants herein are not genuine homebuyers who are interested in the resolution of the alleged insolvency of the Corporate Debtor but are speculative investors and that they are not even allottees of a real estate project. In terms of the Master Agreement to Sell dt.16.06.2014, the Applicants herein have been described as “the prospective purchasers” and not allottees. Further, in terms with the Syndicated Loan Agreement dt.22.11.2014, the Applicants herein have been described as “Lenders”. Thus, the Applicants herein are not allottees as defined under Section 2(d) of Real Estate (Regulation and Development) Act, 2016 and as such, are not Financial Creditors.
- (c) The Corporate Debtor has offered various settlement proposals to the Applicants herein, under which the Corporate Debtor has not only offered possession of the respective plots to the Applicants but have also offered various alternative units to the Applicants as options. The Corporate Debtor has also offered to refund the amounts paid by the Applicants along with a lumpsum amount as profit / interest. Out of 83 Applicants, 52 Applicants have already accepted such

settlement proposals of the Corporate Debtor. However, now the remaining 31 Applicants are rejecting all such offers of the Corporate Debtor and drag the Corporate Debtor into insolvency. Therefore, it is clear that such 31 Applicants are nothing but speculative investors.

- (d) The Applicants have executed Deeds of Adherence with IDBI and Karvy as the Security Trustee and Facility Agent respectively under the Master Agreement to Sell or the Syndicated Loan Agreement, as the case may be. However, the Corporate Debtor has never even issued any allotment letters in favour of the Applicants herein nor any Builder-Buyer Agreement or any other such agreement has been executed between the Applicants and the Corporate Debtor. As such, there is no privity of contract between the Corporate Debtor and the Applicants.
- (e) All sums were disbursed by the Applicants in favour of IDBI and Karvy and there has never been any disbursement from the Applicants to the Corporate Debtor. As such, they do not satisfy the requirements of a 'financial debt' defined under the Code. Further, Karvy and IDBI are not parties to the present proceedings and thus the instant Petition is bad for non-joinder of necessary parties. Also for maintaining an Application u/s 7 of the Code, the Applicants are required to fulfil the threshold criteria. However, in the present Application, the Applicants have clubbed two separate classes of creditors which is not envisaged under the Code.
- (f) It is contended that there has been no defaults on the part of the Corporate Debtor. The issue at hand in the case is only on account of failure on the part of Karvy to perform its obligations under the Master Agreement to Sell dated 16.06.2014 as well as the Syndicated Loan Agreement dated 22.11.2014.
- (g) In support of its submissions, the Respondent had relied upon the following judgments:

- i. *Pioneer Urban Land and Infrastructure Ltd. & Ors. v. Union of India & Ors. (MANU/SC/1071/2019);*
- ii. *Shubha Sharma v. Mansi Brar Fernandes & Anr. in Company Appeal (AT) (Insolvency) No.83 of 2020 dated 17.11.2020;*
- iii. *Mrs. Nidhi Rekhan v. M/s. Samyak Projects Pvt. Ltd. in Company Appeal (AT) (Ins) No.1035 of 2020 dated 31.01.2022;*
- iv. *Hon'ble Apex Court in Anuj Jain v. Axis Bank Ltd. etc. etc. in Civil Appeal Nos.8512-8527 of 2019 dated 26.02.2020;*
- v. *Surendra Sharma v. Mantri Developers Pvt. Ltd. (MANU/NC/1159/2021)*
- vi. *Vidarbha Industries Power Ltd. v. Axis Bank Ltd. (2022) 8 SCC 352.*

12. Heard Shri Srijan Sinha, learned Counsel for the Petitioners and Shri Sandeep Bajaj along with Shri Devansh Jain, Ld. Counsels for the Respondent and perused the pleadings on record.

13. It is seen from the Petition that the present case is filed by Brig. E.S. Krishnamurthy, for himself and on behalf of other 82 Financial Creditors seeking to initiate CIRP against the Corporate Debtor-M/s. Bharath Hi-Tecch Builders Private Limited. A Master Agreement to Sell dated 16.06.2014, which is placed on record as Annexure-1(a) of the CP, was entered between M/s. Bharath Hi-Tecch Builders Private Limited ('the Company'), IDBI Trusteeship Services Limited ('the Security Trustee') and Karvy Realty (India) Limited ('Facility Agent') (collectively called as the 'Parties') to raise Rs.50 Crores for development of 100 acres of agricultural lands in Bagepalli Village, Chikkaballapur Taluk ('the proposed residential layout') by selling the plots to the prospective purchasers through the Facility Agent. Accordingly, in terms of the above said Master Agreement to Sell, the Financial Creditors have executed Deeds of Adherence / Letter of Intent addressed to / executed with the Corporate Debtor through the Facility Agent. As per the said Master Agreement to Sell the Corporate Debtor was under an obligation to convey and register the plots to the Financial Creditors within 21 months from the date of execution of the aforesaid Agreement. In order to determine the privity of contract between the Financial Creditors and the Corporate Debtor herein,

it is pertinent to note relevant Clauses of the Master Agreement to Sell dated 16.06.2014, which is reproduced below:

*“4. The Parties are in the process of identifying certain individual purchasers (hereinafter referred to as “the Prospective Purchasers”) who will pay certain specific amounts by way of an advance purchase consideration, for purchase of plots comprised in the Project Land. The market value of all the plots comprised in the Project Land is approximately upto INR 50,00,00,000/- (Rupees Fifty Crores Only) (hereinafter referred to as the “the Entire Advance Purchase Consideration”), towards the purchase of specific individual plots to be identified by them, based on the Project Layout prepared by the Company. **The Prospective Purchaser will deposit an amount as advance purchase consideration in the Escrow Account (as defined below) towards the purchase of the plot from the Company. The amount paid by the Prospective Purchasers for purchasing plots from the Company shall be considered as “Advance Purchase Consideration” for the purpose of this Agreement.***

....

*8. **The Company has appointed Karvy to assist in facilitating this transaction and liaising with Prospective Purchasers, to which Karvy has acquiesced in the manner stated in the Transaction Documents.***

*9. **Vide a Security Trustee Appointment Agreement (hereinafter referred to as the “STAA”) dated 16.06.2014, the Company has appointed IDBI Trusteeship Services Limited as the Security Trustee, for the purpose of holding in trust for and on behalf of the Prospective Purchasers, the Immovable Property and/or any other Security Interests (as defined hereunder) given by the promoter of the Company for securing the Refund Proceeds (as defined under Clause 10.2 hereunder), upon the terms, conditions and covenants more particularly stated therein.”***

- 14.** From the above it can be seen that there is a privity of contract between the Financial Creditors herein and the Respondent Company. Further, it is seen that the Corporate *vide* its letter dated 29.02.2016 addressed to some of the Financial Creditors herein requested for extension of time for conveying the plots by 31.10.2016; failing which the Respondent Company shall return the entire amount paid by those Applicant(s) along with interest as per the Master Agreement to Sell dated 16.06.2014 from the date of their investment till the date of disbursement of such amount. A copy of Certificate issued by the Facility Agent showing the purchase consideration paid by some of the Financial Creditors under the Master Agreement to Sell is placed on record at Page 95

of the Petition. Consequent to the above, the Corporate Debtor has defaulted in performing its obligation as it neither conveyed the plots nor repaid the purchase consideration amount along with the specified interest to the Financial Creditors. Therefore, the default is established as the Respondent failed to deliver on 31.10.2016. The present Petition is filed on 26.04.2019 which is within the period of limitation.

- 15.** As stated supra, the Respondent itself has stated that the Project in question has 660 allottees. Therefore, the threshold requirement of minimum 100 allottees or 10% of the total allottees of the Project (10% of 660) i.e. 66, whichever is less, is satisfied in the instant case as the Petition is filed by 83 Petitioners. As stated supra, the Facility Agent *vide* Certificate dated 25.04.2019, which is placed at page 96 of the Petition, shows that as on 31.03.2019 an amount of Rs.1,52,46,574/- is due by the Respondent Company to the Purchasers. Vide another letter dated 25.04.2019, which is placed at 581 of the Petition, the Facility Agent has certified that as on 31.03.2019, several Financial Creditors, as per the terms of Syndicated Loan Agreement dt.22.11.2014 (SLA), have advanced a total amount of Rs.14,42,00,000/- to the Corporate Debtor herein through M/s. Karvy Realty (India) Ltd. during the year 2014-16, and that as per its records, an amount of Rs.32,31,85,920/- is due to the lender/investors by the Corporate Debtor. As per the terms of SLA, the loans advanced to the Corporate Debtor shall be repayable within 24 months from the date of SLA. Subsequently, the Corporate Debtor *vide* letter dated 30.11.2016 addressed to all the investors/lenders *inter alia* requested to extend the term of repayment of Principal amount by 12 months along with applicable rate of interest as per the SLA; while also admitting the default in payment of Principal and Interest. The various proposals for settlement with the Lenders / Financial Creditors itself establishes this conclusively. The facts narrated above establishes that there is a default committed by the Corporate Debtor and the default amount is above Rs.1 Lakh.
- 16.** The aggregate amount claimed to be in default as per Part-IV of Form-1 itself is Rs.33,84,32,493/- (Rupees Thirty Three Crore Eighty Four Lakh Thirty Two Thousand

Four Hundred and Ninety Three Only) as on 31.03.2019 i.e., more than the threshold limit of Rs.1 Lakh (as per the requirement of the Law in 2019). The Corporate Debtor has not disputed the claim amount, nor denied the existence of Master Agreement to Sell and Syndicated Loan Agreement. However, the Ld. Counsel for the Petitioner explained that the non-delivery of the Plots and non-refund of the amount paid by the Plot buyers when demanded, proved that the default was established. In view of the same, the C.P. is liable to be admitted.

17. It is pertinent to refer to the Judgment of the Hon'ble Supreme Court in *Manish Kumar vs. Union of India, (2021) 5 SCC 1*, wherein at para 181 it *inter alia* opined that “*if an allottee is able to, in other words, satisfy the requirements, as on the date of the presentation, the requirement of the impugned law is fulfilled.*” Therefore, the subsequent settlement / withdrawal by some of the Applicants herein as stated by the Respondent is untenable in determining the admission of the Application as long as the pre-requisites of Section 7 of the Code are satisfied.
18. We have carefully considered the arguments of the respective Counsels. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,000/- (Rupees One Lakh Only), the **Petition** is **admitted** in respect of Respondent-**Bharath Hi-Tecch Builders Private Limited** under Section 7 of the I&B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
 - (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 Securitization 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) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
 - (f) The provisions of sub-section (1) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority, and to a surety in a contract of guarantee to a Corporate Debtor;
 - (g) The order of moratorium shall have effect from the date of this order till 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.
- 19.** The Petitioners have proposed the name of Mr. M. Raguram, a qualified insolvency professional having Registration No. IBBI/IPA-003/IP-N00072/2017-2018/10582 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written Consent given by the IRP in Form 2 dated 19.04.2019 has been filed along with the C.P at Page Nos.584-586, wherein it was declared he is eligible to be appointed as IRP in the case of the Corporate Debtor and that no disciplinary proceedings are pending against him with the Board or Insolvency Professional Agency of Institute of Cost Accountants of India. However, since the copy of Certificate of Registration is not filed, the IRP shall file the same within one week from the receipt of this order.
- 20.** The Law Research Associate of this Adjudicating Authority has checked the credentials of Mr. M. Raghuram, and there is nothing adverse against him. In view of the above,

the Bench appoints **Mr. M. Raguram**, bearing Registration No. IBBI/IPA-003/IP-N00072/2017-2018/10582 and registered address at B-9, Abhinayam 1, Sakthi Nagar, Second Avenue, Nolambur, Chennai-600095, Mobile No.: 86674416367, E-mail ID: adiyensaranagathi@gmail.com as the **Interim Resolution Professional** of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

21. The Financial Creditors shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakhs Only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
22. The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
23. A copy of the order shall be communicated to both the Parties. The learned Counsel for the Petitioners shall deliver a copy of this Order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this Order to the Interim Resolution Professional at his e-mail address forthwith.

Sd/-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

jsrk

Sd/-
T. KRISHNAVALLI
MEMBER (JUDICIAL)