

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

C.P. (IB)No.301/BB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016.

In the matter of

M/s. Galaxy Properties Private Limited

No. 8 (Old. No. 49),
Radha Mohan Street,
Velachery,
Chennai – 600 042

- Petitioner/Operational Creditor

Versus

M/s. Puravankara Limited

No. 130/1, Ulsoor Road,
Bangalore – 560 042

- Respondent/Corporate Debtor

Date of Order: 02nd December, 2019

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

Parties/Counsels Present:


For the Petitioner : Shri B. Arvind Srevatsa with
Ms. B.V.Vidyulatha

For the Respondent : Shri Joshua H. Samuel with
Shri Christopher. E

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. The instant Company Petition bearing C.P.(IB)No.301/BB/2019 is filed by M/s. Galaxy Properties Pvt. Ltd., ("Petitioner/Operational Creditor"), U/s. 9 of the IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016, by inter-alia, seeking to initiate Corporate


Page 1 of 5

Insolvency Resolution Process (CIRP) in respect of M/s. Puravankara Ltd., ("Respondent/Corporate Debtor") on the ground that it has committed default for an amount of Rs.14,20,84,566/- which consists of Rs.11,90,00,000/- (Rupees Eleven Crores Ninety Lakhs only) as Principal and Rs.2,49,84,566 as interest @ 8% p.a. from 22.12.2016 till 05.08.2019.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:
- (1) M/s. Galaxy Properties Pvt. Ltd. (herein after referred to as Petitioner/Operational Creditor) was incorporated on 26.10.2006 under the Companies Act, 1956 bearing CIN: U70101TN2006PTC061376. Its main object of the Company are to carry on the business in Real estate.
 - (2) M/s. Puravankara Limited (herein after referred as Respondent/Corporate Debtor) was incorporated on 03.06.1986 under the Companies Act, 1956 bearing CIN: L45200KA1986PLC051571. Its Authorized Share Capital is Rs.160,00,00,000/- (Rupees One Hundred and Sixty Crores only) and Paid-up Capital of Rs.118,57,48,430/- (Rupees One Hundred and Eighteen Crores Fifty-Seven Lakhs Forty-Eight Thousand Four Hundred and Thirty only). Its main objects of the Company are to look after to buy lands and to develop the same.
 - (3) Since both the parties are interested to do their respective business and thus entered into Memorandum of Understanding dated 22nd November 2006 by incorporating various terms and conditions. Subsequently, the said Memo was amended vide Memo dated 22.11.2007.
 - (4) Subsequently, dispute arose between the parties regarding rights and obligations of the parties arose under the said



Memo's. Accordingly, the Petitioner invoked Arbitration available under Clause 12 of Memorandum of Understanding dated 22.11.2006. Accordingly, Arbitral Tribunal came to be constituted by appointing Justice J. Kanakaraj, as Sole Arbitrator. The Arbitral Tribunal, after entering reference, passed an Award dated 22.12.2016, whereby it categorically held in respect of Issue No. 2 that "...the MoUs dated 22.11.2006 and 22.11.2007 were abandoned or put an end to by mutual consent of both the parties and the evidence clearly supports this decision and the question of finding fault with either of the parties does not therefore arise...." The Tribunal further held that the Respondent were ".....not in a position to buy back the shares of NDPL and VDPL. Therefore, there is no use (Applicant) complaining that under Section 65 of the Contract Act, that the Respondent are bound to restore the advantage gained by them under the MoUs." Further, the Arbitral Tribunal held that the Applicant was never ready with the investors and was not in a position to pay the share value of NDPL and VDPL, and rightly rejected the main prayer sought for by the Respondent for retransferring the lands under NDPL and VDPL. Subsequently, Arbitrator passed an Order dated 22nd February, 2017 by correcting computational errors.

- (5) Aggrieved by the said Award, the Respondent has filed OP No.433 of 2017 and A.No.3477 of 2017 before the Hon'ble High Court of Judicature at Madras, U/s. 34 of Arbitration and Conciliation Act, 1996, which are ordered by dated 20.02.2018 by the direction the Petitioner therein/ Respondent herein to pay a sum of Rs.4,12,25,893/- to Galaxy Properties Pvt. Ltd., Petitioner herein with interest @ 12% p.a. from the date of Award till date of realization. Aggrieved by the said order, both the parties have preferred



Appeals, before the Hon'ble High Court of Judicature at Madras, under Order XXXVI Rule 1 Original side rules read with clause 15 fo Letters patent vide Original side Appeal Nos. (OSA) 81 and 94 of 2018 and C.M.P.No.5997 of 2018, which were disposed of by Common judgment dated 01.02.2019 by inter-alia setting aside the order passed by Single Judge and thus confirmed the Original Award passed by Sole Arbitrator by modifying the rate of interest @ 12% p.a. to 8% p.a.

- (6) Aggrieved by the said order dated 01.02.2019, the Respondent preferred SLP Nos. (C) 13547-13548 of 2019, before the Hon'ble Supreme Court, which came to dismissed, vide Orders dated 05.07.2019, and thus the issue became final having confirmed final order dated 01.02.2019 passed by the Hon'ble High Court of Madras. Aggrieved by this order, the Respondent has preferred a Review Petition (C) No(s). 2451-2452 of 2019, which was dismissed by an order dated 27th November, 2019.
3. Heard Shri B. Arvind Srevatsa with Ms. B. V. Vidyulatha, learned Counsels for the Petitioner and Shri Joshua H Samuel with Christopher .E, learned Counsels for the Respondent. We have carefully perused the pleadings of both the parties and the extant provisions of the Code and the Rules made there under. The mater was reserved for orders.
4. Shri Joshua H Samuel, the learned Counsel for the Respondent has brought to our notice that the Review Petition filed by the Respondent, against the dismissal of SLP, stand dismissed, vide order dated 27.11.2019. Since the Award in question became final with modification of rate of interest from 12% to 8% p. a., the Respondent have, consequently they have deposited DD



bearing No. 545478 dated 30.11.2019 for an amount of Rs.5,56,75,851/- (Rupees Five Crores Fifty Six Lakhs Seventy Five Thousand Eight Hundred and Fifty One only) out of Award Amount of Rs. 24,68,10,000/- with interest at 8 % P.a. with the Registrar General, High Court of Madras, and the remaining amount will be deposited before the Hon'ble High Court of Madras, within a period of twenty (20) days.

5. Ms. B. V. Vidyulatha, learned Counsel for the Petitioner submits that Petitioner may be permitted to withdraw the instant at present, however, subject to depositing the entire amount in terms of Award dated 22.12.2016, and the subsequent correction order dated 22.02,2017, and by reserving liberty to the Petitioner to file fresh Company Petition, in the event, the Respondent failed to pay in terms of Award.
6. In the light of above facts and circumstance of the Case, the Company Petition bearing C.P.(IB)No.301/BB/2019 is hereby disposed of as withdrawn by directing the Respondent/Corporate Debtor to deposit total amount, in terms of Award dated 22.12.2016, and subsequent correction order dated 22.02,2017 R/w Common judgment dated 01.02.2019 passed in OSA Nos. 81 and 94 of 2018 and C.M.P.No.5997 of 2018, within 20 (twenty days) from today, failing which, the Petitioner is at liberty to file fresh Company Petition in accordance with law. No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Shruthi