IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(Through web-based video conferencing platform)

CP (IB) No.87/BB/2021
U/s. 7 of the IBC, 2016
R/w Rule 4 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Mr. Aravindan Devarajan & 6 Ors. ... Petitioners/Financial Creditors

VERSUS

M/s. Lalith Gangadhar Constructions Pvt. Ltd.
R/O: No: 12/1, Rest House Road,
Bangalore – 560 001. ... Respondent/Corporate Debtor

Order delivered on: 26th April, 2022

Coram: 1. Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri. Abhijit Atur

For the Respondent : Ms. Rupa Ron

ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Petition is filed, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') by Mr. Aravindan Devarajan & 6 Ors. (hereinafter referred to as 'Applicants/Financial Creditors') to initiate the Corporate Insolvency Resolution Process ('CIRP') against M/s. Lalith Gangadhar Constructions Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor).

2. The Corporate Debtor namely M/s. Lalith Gangadhar Constructions Private Limited is a Company incorporated on 19.09.2007 under the provisions of the Companies

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Act, 1956 with CIN:U45201KA2007PTC043903 having its registered office at No: 12/1, Rest House Road, Bangalore – 560001, which falls within the territorial jurisdiction of this Adjudicating Authority. The Nominal Capital of the Respondent/Corporate Debtor is Rs.10,00,000/- and the Paid-Up Share Capital is Rs.2,18,180/-.

3. The present application has been filed by the Financial Creditors against the Corporate Debtor in respect of the default amount of Rs.7,48,37,351/- (Rupees Seven Crores Forty Eight Lakhs Thirty Seven Thousand Three Hundred and Fifty One only). The default amounts as per NESL is Rs. 1,33,00,198/- as against Mr. Eby Mathew and Mrs. Merry Eby (Financial Creditor) occurred on 01.01.2016, the default of Rs.1,19,41,447/- as against Mr. Aravindan Devarajan and Mrs. T. Ranganayaki (Financial Creditor) occurred on 01.07.2016, the default of Rs. 1,13,62,863/- as against Mrs. Chandrika Jain, Mr.Prashanth S and Mrs. Chandrakantha (Financial Creditor) occurred on 01.01.2016, the default of Rs. 1,03,79,599/- as against Mr.Digvijay Singh and Mrs. Nishnu Rakheja (Financial Creditor) occurred on 18.07.2015, the default of Rs. 77,18,108/- as against Mrs. Sreeja Iyer and Mr.Pradeep Harihara Iyer (Financial Creditor) occurred on 02.01.2015, the default of Rs. 1,03,85,136/- as against Mr.Rahul Kumar and Mrs. Shalini Kamalakannan (Financial Creditor) occurred on 31.03.2019 and the default of Rs. 97,50,000/- as against Mrs. Divya P and Mr. Ranjeeth Kumar Murthy (Financial Creditor) occurred on 02.08.2021 as per NESL.

4. It is submitted that the corporate debtor, a real estate developer, approached the financial creditors with the proposal to construct, handover and convey townhouses in the residential project known as **'LGCL ONE STREET'** in Bangalore. The corporate debtor has entered into the Joint Development Agreement dated 25/04/2012 with the owner of the land on which the project is proposed to be constructed. Based on the representations and assurances of the corporate debtor, the financial creditors decided to purchase townhouses in the residential project /LGCL One Street/. Accordingly, each of the financial creditors entered into agreements for sale and construction agreements with the owner of the land, who was represented by the corporate debtor who is the power of attorney holder of the owner of the land. Pursuant to such agreements, the financial creditors disbursed sums of money to

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the corporate debtor for the purpose of construction and the sale of the townhouses which is attached as Annexure -A of the Petition.

5. It is further submitted that in September 2019, the construction activity came to a standstill. Despite repeated requests, the corporate debtor did not resume construction activity and cited shortage of funds as the reason, thus leaving the financial creditors aggrieved.

6. It is stated that given the lap of progress in construction despite timely payment by the financial creditors and the frivolous excuses provided by the corporate debtor, the financial creditors lost faith in the corporate debtor. Accordingly, the financial creditors requested the corporate debtor to provide a construction schedule for completion of construction and delivery of possession. One such request was made by an email dated 19.03.2021 which is annexed as Annexure – C of the petition. In response to such a request, the corporate debtor provided a construction schedule by way of an email dated 30.03.2021. A copy of the construction schedule is produced herewith as Annexure-D of the petition.

7. It is submitted that based on the schedule provided by the corporate debtor, which consisted of revised dates for delivery, the financial creditors, left with no choice and while placing their faith in the corporate debtor once again, agreed to make additional payment, as recorded in the email dated 05.04.2021 which is annexed as Annexure – E of the petition. However, contrary to various commitments and assurances provided to the financial creditors, the corporate debtor once again failed to complete the stages of construction in accordance with the schedule. To the grave disappointment of the financial creditors, the project is still at a very nascent stage. Photos displaying the nascent stage of the construction on the project of the corporate debtor is attached as Annexure – F of the petition. The financial creditors understand that the corporate debtor does not have a valid and subsisting registration for the project under the Real Estate (Regulation & Development) Act, 2016.

8. Further, the website of the corporate debtor has been "**Suspended**". A screenshot of the suspended website of the corporate debtor is attached as Annexure – G of the Application. The financial creditors have made multiple attempts to contact the corporate debtor and seek resolution. The financial creditors have issued multiple emails to the corporate debtor, but no avail is attached as Annexure – H of the

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application. The corporate debtor has misused the patience and trust placed by the financial creditors till date. The corporate debtor has no intention to honour the Agreements for sale and construction and deliver the townhouses.

9. The financial creditors have reported default of the financial debt to the information utility. Despite receipt of intimation from the information utility, the corporate debtor has continued to remain unresponsive. The report of default is hence deemed to be authenticated. The reports of the default of financial debt towards each of the financial creditors as issued by the information utility are produced as Annexure – B of the Application.

10. The Corporate Debtor through reply stated that the project **LGCL ONE STREET** could not be completed on time, and the company is currently facing financial constraints in completion of project. The company has been consistently declaring losses in its financial statements.

11. We have heard the learned Counsel for the parties and have also perused the records carefully.

12. Section7(5)(a) of the Code is as follows:-

> *"5) Where the Adjudicating Authority is satisfied that-*
>
> *(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."*

13. In the present case, the occurrence of default is evidenced by the details furnished by the Petitioner including the record of financial information (Form-C) issued by NESL in respect of the debt of the Corporate Debtor (enclosed as Annexure-B Series of this Petition).

14. The other issue for consideration is whether present application is filed within limitation. The transaction involving the defaulted amount dates back to 03.03.2019 (as shown as Annexure B-31) and the application was filed on 28.09.2021. Hence, the Petition has been filed within the period of limitation.

15. The respondent corporate debtor in his reply, admitted the debt and default.

16. The application filed in the prescribed Form No.1 is found to be complete.

17. In the given facts and circumstances, the present petition being complete and having established that the default in payment of the Financial Debt for the amount above

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Rs.1,00,00,000/-, the petition is admitted in terms of Section 7(5) of the IBC in respect of the **"LGCL ONE STREET"** project of the Corporate Debtor and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences 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 Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator 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 passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

18. In Part-III of Form No.1, Mr. Ratnakar Shetty, Registration No. IBBI/IPA-001/IP-P01630/2019-2020/12718 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 09.09.2021 has been filed along with the C.P are found at Page Nos.523-525 of the Petition. However, since certificate of registration is not filed, the IRP shall file the same within one week from the receipt of this order. The

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Law Research Associate of this Tribunal has checked the credentials of Mr. Ratnakar Shetty and there is nothing adverse against him. In view of the above, we appoint Mr. Ratnakar Shetty, bearing Registration No. IBBI/IPA-001/IP-P01630/2019-2020/12718, registered address at No.F507, Mantri Tranquil, Gubbalala Gate, Kanakapura Road, Bengaluru – 560061, e-mail: rcshetty.co@gmail.com, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

19. The Interim Resolution Professional shall after collation of all the claims received against 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 Tribunal 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 Tribunal every fortnight.

20. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)