



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

(Through physical/web based video conferencing platform)

CP (IB) No. 112/BB/2023

Application U/s. 7 of the Insolvency & Bankruptcy Code, 2016

R/w Rule 4 of the Insolvency & Bankruptcy

(Application to Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

1. Antony Augustine & Sherine Santosh

227/4, 3rd B Cross,
3rd Main, Venkatapura
Koramangala, Bengaluru 560 034

... Financial Creditor/Petitioner No.1

2. E. Sridevi & M. Elango

206, Bhavya Residency,
Green Glen Layout,
Bellandur, Bengaluru 560 103.

... Financial Creditor/Petitioner No.2

3. Mohamed Abdul Kalam Azad & M. Khader Mohideen

13/19, Mobbs Street,
Nagercoil 1

... Financial Creditor/Petitioner No.3

4. Pavani Veerabai & K.V. Subbaraju

H-1103, Mantri Lithos,
Next to N1 Building,
Manyata Tech Park, Bengaluru, 566045.

... Financial Creditor/Petitioner No.4

5. Sowmya Chalasani

103-A Block, Srishti Apartments,
SSA Road, R.T. Nagar post,
Bengaluru 560 032.

Also at:

Flat No. 501, T05, Linden,
A Block, Godrej Woodsman Estate,
Hebbal, Bengaluru 560024

... Financial Creditor/Petitioner No.5



6. Vikram Jeet Singh Paul

43, Ground Floor, 1st Avenue,
6th Main, Techers Colony,
Koramangala Ext. Bengaluru 560 034

... Financial Creditor/Petitioner No.6

VERSUS

M/s. LGCL URBAN HOMES (INDIA) LLP

Having Registered office at
No. 12/1, Rest House Road,
Bangalore, Karnataka, India, 560001.

... Respondent/Corporate Debtor

Order delivered on: 14/11/2024

- Coram:**
1. Hon'ble Shri K. Biswal, Member (Judicial)
 2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Petitioners : Shri Varun S.
For the Respondent : Shri Shravan S Lokre

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present Petition has been filed 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 on 03.04.2023 by **Mr. Antony Augustine & Sherine Santosh and 5 others** (hereinafter referred to as 'Petitioners / Financial Creditors') with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against **M/s. LGCL URBAN HOMES (INDIA) LLP** (hereinafter referred to as 'Respondent / Corporate Debtor') for a total outstanding of Rs. 3,99,45,816 (Rupees Three Crore Ninety Nine Lakhs Forty-Five Thousand Eight Hundred and Sixteen only) and the Date of Default is 30.06.2020 as mentioned in Part IV of the Petition.



2. The Corporate Debtor, namely, LGCL URBAN HOMES (INDIA) LLP was incorporated on 02.04.2013 with LLPIN: AAB-4374 with its registered office situated at No. 12/1, Rest House Road, Bengaluru-560001. Hence, the jurisdiction lies with this Adjudicating Authority.
3. Brief facts of the Petition are given hereunder:
 - i. The present Petition is filed by the Financial Creditors vide CP (IB) No. 112/BB/2023, dated 03/04/2023 against the Corporate Debtor in respect of the default amount of 3,99,45,816 (Rupees Three Crore Ninety-Nine Lakhs Forty-Five Thousand Eight Hundred and Sixteen only) as per part IV of Form No.1.
 - ii. It is submitted that Corporate Debtor, a real estate developer, floated a residential/ group housing project known as “LGCL United Towers” in Bangalore.
 - iii. The Financial Creditors purchased flats in said project by entering into Sale Agreements and Construction Agreements with the Corporate Debtor. Pursuant to Sale Agreements and Construction Agreements, the Financial Creditors made payments to the Corporate Debtor. Details of said flats and payments are attached as Annexure A to the Petition.
 - iv. The construction of the project commenced on 11th May 2017, however only after a small portion of construction was done, the project construction came to a standstill. As per Clause 8 of the Construction Agreements, the Corporate Debtor was bound to deliver the possession of flat units by 30.06.2020 to the Financial Creditors.
 - v. On queries made by Financial Creditors, Corporate Debtors officials cited shortage of funds as reason for standstill of the project. However, in the interest of completion of project and hoping to receive possession, the Financial Creditors continued to make payments to the Corporate Debtor.
 - vi. Despite repeated requests from Financial Creditors to resume the project, the project remains incomplete and given the lack of progress in construction despite timely payment, the Financial Creditors lost faith in Corporate Debtor.



- vii. The Financial Creditors have made several attempts to contact the Promoters and officials of the Corporate Debtor but to no avail and it is evident that Corporate Debtor has no intention of honouring their commitment towards the Financial Creditors.
 - viii. In light of the aforementioned, it is evident that the Corporate Debtor has committed default of financial debt and that the Financial Creditors are not likely to receive their flats; nor has the Corporate Debtor returned consideration amounts to the Financial Creditors.
 - ix. In this background, it is just and necessary to commence the Corporate Insolvency Resolution Process in respect of the Corporate Debtor, so that project can achieve completion and Financial Creditors can get possession of their respective flat units. Hence, the present application.
4. The Respondents have filed the Statement of Objection, vide, Diary No: 418, dated 19.01.2024 and contended as under:
- i. The Petition filed by Financial Creditors for initiation of CIRP under section 7 of IBC, 2016 is not maintainable in facts and circumstances.
 - ii. The Corporate Debtor submits that the Construction Agreements and Sale Agreements relied upon by the Petitioner to establish debt are unstamped and unregistered documents.
 - iii. The Sale Agreement that have been executed by Financial Creditors contains provision for Arbitration under clause no. 26, and thereby Petitioners are required to seek remedy under Arbitration & Conciliation Act, 1996.
 - iv. The Petition does not substantiate any default by Corporate Debtor as it relies upon Construction Agreements and Sale Agreement that have been executed over three years ago and thus barred by limitation.
 - v. The Holding Company of Corporate Debtor, Lalith Gangadhar Constructions Private Limited has a 75% stake in the Corporate Debtor and that the said company is undergoing CIRP vide order dated 26.04.2022 passed in C.P (IB) No. 87/BB/2021 by this Hon'ble Tribunal. And that the Resolution Plan, currently placed before COC

for approval, also addresses the concerns of Petitioners in the current Petition.

5. In compliance to the Order dated 23.11.2023, Ld. Counsel for the Petitioner has filed a memo explaining the issue of Limitation, vide Diary No.6091, dated 05.12.2023, stating as under:

- i. The present application filed under Section 7 of IBC, 2016 is within Limitation in terms of Section 238A of the Code. That the period of limitation for initiation of CIRP under Section 7 has been held to be 3 years under Article 137 of the Limitation Act, 1963 by Hon'ble Supreme Court in *Gaurav Hargovindbhai Dave vs. Asset Reconstruction Company (India) and Anr.* [(2019) 10 SCC 572].
- ii. The due dates of each of the Financial Creditors herein is specified below, as has been set out in **Annexure A** to the Application:

Sl No.	Allottees	Amount Due	Construction Agreement	Due Date for Handover	Reference in Petition
1.	Antony Augustine & Sherine Santosh	50,80,366	06.07.2017	June 2019 (January 2020 with grace period.)	Pg. 52: Clause 8.1 of the Construction Agreement
2.	E. Sridevi & M. Elango	66,14,304	09.06.2017	July 2019 (January 2020 with grace period.)	Pg. 109: Clause 8 of the Construction Agreement.
3.	Mohamed Abdul Kalam Azad & M. Khader Mohideen	76,41,896	16.03.2020	30.06.2021	Pg. 183: Clause 8.1 of the Construction Agreement.
4.	Pavani Veerabai &	42,93,359	12.06.2018	30.06.2020	Pg. 232: Clause 8.1 of the



	K.V. Subbaraju				Construction Agreement.
5.	Sowmya Chalasanani	84,06,06 5	30.10.2018	30.06.2020	Pg. 330: Clause 8.1 of the Construction Agreement.
6.	Vikram Jeet Singh Paul	79,09,82 6	22.04.2019	30.06.2020	Pg. 406: Clause 8.1 of the Construction Agreement.

iii. The Hon'ble Supreme Court of India, in *Manish Kumar vs. UOI & Anr.* [(2021) 5 SCC 1], held in para 175, that if the sum owed by the Corporate Debtor to even one of several applicants who seek initiation of CIRP meets the threshold of Rs. 1 Crore and falls within the period of limitation, then any bar of limitation against other applicants will not affect the maintainability of such application.

iv. In this context, the date of default of Allottees/ Financial Creditors listed at Serial No. 3 to 6 of the table above, fall within the period of limitation since the present application was filed on 03.04.2023. In light of the aforementioned, the present application is within time in terms of Section 238A of the Code.

6. Heard the Ld.Counsel for the Petitioner and the Respondent and perused the pleadings on record.

7. It is noticed that, for different accounts of different Petitioner, various dates of Default have been disclosed, based on the Authenticated Record of Default (ROD) issued by NESL in Form No. D. Further, reliance is place upon the Petitioner's Contention in Memo on Limitation, diary no. 6091 dated 05.12.2023, on the decision of Hon'ble Supreme Court in *Manish Kumar vs. Union of India & Anr.* [(2021) 5 SCC 1], which clarifies on the point that a Petition shall be maintainable for all allottees, when the cause of action is within limitation for just one of the allottees. Therefore, considering the date of Default for Petitioner no. 3, 4, 5 and 6 is 30.06.2020 and since the present



C.P. has been filed on 03.04.2023, it is clear that present C.P. is within the period of limitation.

8. As per the Petitioners, in Part IV of Form 1 the subject Project i.e., *LGCL United Towers* consists of a total number of 50 Flats out of which 35 remain unsold. The present Petition has been filed jointly by 6 out of the 15 allottees of the Project and accordingly have satisfied the threshold limit condition under section 7 of IBC, 2016. Details of the flat units allotted to each petitioner are marked as Annexure A to the Petition.
9. Under Section 7 of the IBC, in order to initiate CIRP, it is essential that the Applicant proves that there is a financial debt as defined under Section 5(8) of the IBC, 2016 and that a default under Section 3(12) has been committed in respect of that financial debt. In the present case the material on record clearly goes to show that Corporate Debtor had been given the advance amounts of consideration for flats, the account statements and cheques have been attached as Annexure D, H, M, R, W and AA to the Petition. Finally, it is seen from the Clause 8 of the Construction Agreements of Petitioners 3, 4, 5 & 6 that the default date is 30.06.2020:

“8. *COMPLETION:*

8.1 The Developer based on the present plans and estimates and subject to all just exceptions and other provisions of this agreement shall complete the construction of the Schedule ‘C’ property and handover possession of the Schedule C Property by 30-June-2020.”

Construction Agreements are marked as Annexures L, Q, V and Z to the Petition.

10. Further, the Hon’ble Supreme Court in the case of *Innoventive Industries Ltd. vs. ICICI Bank and Ors. reported in (2018) 1 SCC 407* has held as under:

“...30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is



payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

Further, the Hon’ble Apex Court in the above mentioned judgment has also pointed out to the records of the information utility reflecting the existence of a debt and a default to be a determining factor. In this case also the NeSL has further confirmed the date of default mentioned in Form D, Record of Default and established the existence of the Debt and the default.

11. With regards to the objection raised by Corporate Debtor on the Construction Agreements and Sale Agreements relied upon by the Petitioner to establish debt are unstamped and unregistered documents, on verification we have found this objection does not stand.
12. With regards to the objection raised by Corporate Debtor on the presence of Arbitration Clause in Sale Agreement and Construction Agreement, it is relevant to point out para 25 in the decision by Hon’ble Supreme Court in *Indus Biotech Pvt. Ltd.v. Kotak India Venture (Offshore) Fund & Ors. [(2021) ibclaw.in 52 11.52 SC]* states that:

“even if an application under Section 8 of the Act, 1996 is filed, the Adjudicating Authority has a duty to advert to contentions put forth on the application filed under Section 7 of IB Code, examine the material placed before it by the financial creditor and record a satisfaction as to whether there is default or not. While doing so the contention put forth by the corporate debtor shall also be noted to determine as to whether there is substance in the defence and to arrive at the conclusion whether there is default. If the irresistible conclusion by the Adjudicating Authority is that there is default and the debt is payable, the bogey of arbitration to delay the process would not arise despite the position that the agreement between the parties indisputably contains an arbitration clause.”

As the Debt and Default have already been established above, this objection does not stand.

13. With regards to the objection raised by Corporate Debtor on the ongoing CIRP of the Holding Company, reliance can be placed upon the judgement of the



Hon'ble Supreme Court, as submitted by Petitioners, *M/s BRS Ventures Investments Ltd. vs. SREI Infrastructure Finance Ltd. & Anr.*, which states that:

“28. (b) A holding company is not the owner of the assets of its subsidiary. Therefore, the assets of the subsidiaries cannot be included in the resolution plan of the holding company, and

(c) The financial creditor can always file separate applications under section 7 of the IBC against the corporate debtor.”

Thus, in terms of the provisions of para 28 of the aforementioned judgement of the Hon'ble Supreme Court, the objection does not stand.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs1,00,00,000/- (Rupees One Crore), the petition is liable to be admitted in terms of Section 7 of the IBC, 2016.

15. Accordingly, the instant Company Petition bearing CP (IB) No. 112/BB/2023 is admitted and 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
- (b) any court of law, tribunal, arbitration panel or other authority;
- (c) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (d) 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;
- (e) the recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
- (f) 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;



(g) 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;

(h) 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 of the IB Code, 2016 as the case may be;

16. In Part-III of Form No.1, Smt. Ramanathan Bhuvaneshwari, bearing Registration No. IBBI/IPA-002/IP-N00306/2017-18/10864 has been proposed as Interim Resolution Professional (IRP). Form No.2 Written Communication by the IRP has been filed along with the C.P are found at Page Nos. 453 of the Petition. In view of the above, we appoint Smt. Ramanathan Bhuvaneshwari Registration No. IBBI/IPA-002/IP-N00306/2017-18/10864, having registered address at C-006, Pioneer Paradise, 24th Main Road, 7th Phase, JP Nagar, Bengaluru, Karnataka 560078 as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

17. The Financial Creditor 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.

18. 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.



19. 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.

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(K. BISWAL)
MEMBER (JUDICIAL)**