



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MAY, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

WRIT PETITION NO.13477/2020(GM-RES)

BETWEEN

M/S. DREAMS INFRA INDIA PVT. LTD.,
577/B, 2ND FLOOR, OUTER RING ROAD
TEACHERS COLONY, KORAMANGALA
BENGALURU-560 034

REPRESENTED BY RP AS APPOINTED
BY NCLT, BENGALURU
SRI ASHOK KRIPLANI

... PETITIONER

[BY SRI A.MAHESH CHOWDHARY, ADVOCATE
- (THROUGH V.C.)]

AND

THE COMPETENT AUTHORITY
DREAMZ INFRA INDIA PVT. LTD.,
AND OTHER ALLIED COMPANIES/ENTITIES
THE ASSISTANT COMMISSIONER
BENGALURU SOUTH SUB-DIVISION
KANDAYA BHAVAN, K.G.ROAD
BENGALURU-560 009.

... RESPONDENT

(BY SRI H.R.SHOWRI, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA R/W
SECTION 482 OF CR.P.C PRAYING TO QUASH THE
PROCEEDINGS UNDER THE MISC 2/2020 DATED
02.01.2020 IN TERMS OF ANNEXURE-A AND
PROCEEDINGS PENDING ON THE FILE OF HONBLE PRL.

CIVIL AND SESSIONS JUDGE (SPL. JUDGE) CCH-47 AT BENGALURU AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 21.04.2021, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed under Articles 226 and 227 of the Constitution of India read with Section 482 of Cr.P.C. praying this Court to issue a writ of certiorari to quash the proceedings initiated against the petitioner in Miscellaneous No.2/2020 dated 02.01.2020 pending on the file of the Principal City Civil and Sessions Judge (Special Judge), Metropolitan Area, Bengaluru and direct the respondent to handover the properties to Sri. Ashok Kriplani, Resolution Professional vide order dated 20.08.2019 passed by the Hon'ble National Company Law Tribunal (NCLT), Bengaluru and to issue such other writ or grant such other order or relief as this Hon'ble Court deems fit in the facts and circumstances of the case.

2. The factual matrix of the case is that the petitioner is a real estate Company involved in the

development of various housing and apartment projects, and had floated multiple projects since its inception in 2012. The petitioner-Company had executed an Agreement of Sale and Memorandum of Understanding with thousands of homebuyers for sale of apartments in these under construction projects. As per the agreement, the homebuyers were asked to pay certain amount as advance money or earnest in lieu of booking their apartments in the said projects. The apartments were not handed over after collecting advance money from the home buyers.

3. The respondent is a Constituted Authority, appointed by the Government of Karnataka under Section 5(1) of the Karnataka Protection of Interest of Depositors in Financial Establishment Act, 2004 (for short 'the Act, 2004') vide notification bearing No.RD.17.GRC 2017(P-2) dated 20.06.2019. Consequently, the respondent has initiated Section 7(1) of the Act, 2004 against the petitioner and the same has been admitted by the Principal City Civil and Sessions Judge (Special Judge), Metropolitan

Area, Bengaluru on 09.01.2020. Hence, the petitioners in this petition contended that the respondent-Authority owing to various complaints lodged against the promoters and directors of the petitioner-Company invoked the Act, 2004 and attached all the properties of the petitioner-Company since 2018. The respondent-Authority on the understanding of law that, the petitioner-Company falls under the scope and ambit of the Act, 2004 initiated action before Principal City Civil and Sessions Judge (Spl. Judge), Metropolitan Area, Bengaluru stating that the petitioner has accepted the deposits from 3668 depositors to the tune of Rs. 385 Crores.

4. It is further alleged that the petitioner has failed to repay the said amount. It is also contended that in this background of various complaints lodged against the petitioner-Company, three homebuyers being aggrieved by the actions of the petitioner-Company moved a petition before the Hon'ble National Company Law Tribunal bearing CP(IB) No.84/BB/2019 under Section 7 of Insolvency and Bankruptcy Act, 2016 seeking to declare

the petitioner-Company as insolvent. The NCLT, after considerable hearing, admitted the petition on 20.08.2019 and Corporate Insolvency Resolution Process as contemplated under Insolvency and Bankruptcy Act, 2016 was directed to be commenced. In the same order, Sri.Ashok Kriplani was appointed as Interim Resolutional Professional to over look the activities of petitioner-Company. Sri. Ashok Kriplani was confirmed as the Resolutional Professional to the petitioner-Company on 17.12.2019.

Bar & Bench (www.barandbench.com)

5. It is contended that in view of the admission of the petition before the NCLT, period of moratorium parallely commenced, whereby as per Section 14, no suit or proceedings can either be filed against the petitioner-Company or can any pending proceedings including execution continued against the petitioner-Company. As per the provisions of the Insolvency and Bankruptcy Act, 2016, all assets pertaining to petitioner-Company shall be handed over to IRP to ensure the smooth resolution plan to all home buyers. The respondent was informed about

the said proceedings that due to Section 14 of IBC, 2016 the proceeding against the petitioner has been stayed. Further, the IRP has also requested the respondent not to initiate any other proceedings which could hamper the interest of the creditors/homebuyers, in their attempt to recover the money from the petitioner. However, the respondent has acted unilaterally showing no due regard to the interest of the various parties involved. In spite of maintaining continuous conversation and updating respondent, AC did not hand over the properties as per law. Respondent-AC initiated action under Section 7 of the Act, 2004, which is non-est and illegal in view of Sections 14 and 238 of the IBC Act, 2016. In spite of such attachment and holding the custody of the properties, have allowed the sale transactions and Court transfers without restrictions, leading to loss of prime properties in the hands of few self-centered people. Hence, without alternative, the petitioner-Company have approached this Court by filing this petition.

6. Learned counsel appearing for the petitioner in this petition would vehemently contend that the State has no right to invoke the Act, 2004. The provisions of Sections 14 and 238 of the IBC has overriding effect and as such the said provisions would prevail over the State Act. Learned counsel also would vehemently contend that an order has been passed by the NCLT and moratorium has been commenced. When the moratorium is in force, the present proceeding has been initiated against the petitioner herein. There cannot be two parallel proceedings against the petitioner herein when the matter is ceased of before the NCLT.

7. Learned counsel for the petitioner would rely upon the judgment of this Court in the case of **Anand Balkrishna Appugol, Chairman, Shree Krantiveer Sangoli Rayanna Co-op Society Ltd., Belagavi v. Nana Dhondiba Desai and Another** reported in **ILR 2018 KAR 4125** and would contend that the said ratio is aptly applicable to the case on hand. It is further contended that the petitioner is not a financial establishment and hence,

the Act, 2004 cannot be invoked against the petitioner herein.

8. Learned counsel also relied upon the judgment of this Court in the case of ***M.S. Shivashankar v. State of Karnataka Represented by its Chief Secretary to Government and Another*** reported in ***ILR 2010 KAR 328*** wherein it is held with regard to the procedure adopted under the Act in respect of the attachment of properties on default of return of deposits and the procedure which has to be followed. This Court set aside the order impugned and directed to follow the procedure.

9. Learned counsel also relied upon the judgment of the Apex Court in the case of ***Innoventive Industries Limited v. ICICI Bank and Another***, reported in ***(2018) 1 SCC 407***, wherein the Apex Court discussed with regard to repugnancy with 2016 Code and effect of moratorium given to the Company under the Maharashtra Act, as in present case where, by notifications dated 22.07.2015 and 18.07.2016 under the Maharashtra Act, the liabilities of the appellant were temporarily suspended for a period of one

year. The learned counsel also brought to the notice of this Court para Nos.6 and 51, wherein the Apex Court has in detailed discussed and observed that the repugnant legislation by the State is void only to the extent of repugnancy. In other words, only that portion of the State's statute which is found to be repugnant is to be declared void.

10. Learned counsel also would vehemently contend that the Apex Court in this judgment at para Nos.58 to 60 had discussed in detail with regard to Bankruptcy and Insolvency and comes to the conclusion that the earlier State law (Maharashtra Act) is repugnant to the later parliamentary enactment (Insolvency Code) as under the said State law, the State Government may take over the management of the relief undertaking, after which a temporary moratorium in much the same manner as that contained in Sections 13 and 14 of the 2016 Code takes place under Section 4 of the Maharashtra Act. There is no doubt that by giving effect to the State law, the aforesaid plan or scheme which may be adopted under the

parliamentary statute will directly be hindered and/or obstructed to that extent in that the management of the relief undertaking, which if taken over by the State Government, would directly impede or come in the way of taking over the management of the Corporate Body by the interim resolution professional. Also, the moratorium imposed under Section 4 of the Maharashtra Act would directly clash with the moratorium to be issued under Sections 13 and 14 of the Code.

11. Learned counsel also brought to the notice of this Court to Section 238 of the Code, which overrides the other law. The later non-obstante clause of the parliamentary enactment will also prevail over the limited non-obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, the Apex Court held that Maharashtra Act cannot stand in the way of the Corporate Insolvency Resolution Process under the Code. The non-obstante clause in the widest terms possible, is contained in Section 238 of the Code, so that any right of the Corporate Debtor under any other law cannot come in

the way of Code. For all these reasons, the Apex Court held that the Tribunal was correct in appreciating that there would be repugnancy between the two enactments.

12. Learned counsel also relied upon the judgment of the Apex Court in the case of **Anand Rao Korada, Resolution Professional v. Varsha Fabrics (P). Ltd., and Others** reported in **2019 SCC Online SC 1508** and brought to the notice of this Court the detailed discussion made in the judgment with regard to moratorium and also para No.11, with regard to Section 238 of the Code, provisions of this Code to override other laws and also brought to the notice of this Court para Nos.13 to 17, wherein it is held that in view of the provisions of IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor. Once the proceedings under the IBC had commenced and an order declaring moratorium was passed by the NCLT, the High Court passed the impugned interim orders dated 14.08.2019 and 05.09.2019 after CIRP had commenced in

the said case and held that the High Court was not justified in passing such an order.

13. Learned counsel also brought to the notice of this Court the judgment of the Apex Court in the case of ***Alchemist Asset Reconstruction Company Limited v. Hotel Gaudavan Private Limited and Others*** reported in ***(2018) 16 SCC 94***, with regard to Insolvency and Bankruptcy Laws, Insolvency and Bankruptcy Code, 2016, Section 14 - commencement of moratorium after admission of petition under Code. It is held that once moratorium comes into effect, Section 14(1)(a) expressly stops institution or continuation of pending proceedings against corporate debtors.

14. Learned counsel also brought to the notice of this Court the recent judgment of the National Company Law Tribunal Single Bench, Chennai passed in MA/697/2018 in CP/381/IB/2018 in the case of ***J.Manivannan v. The Deputy Superintendent of Police, Economic offences wings***. Learned counsel referring to these judgments would vehemently contend

that there cannot be any parallel proceedings once the matter has been ceased before NCLT. Hence, the very initiation of the proceedings before the Trial Court is erroneous.

15. Per contra, the learned High Court Government Pleader appearing for the respondent-State would vehemently contend that this petition is filed seeking the relief of quashing of the proceedings initiated under Section 7 of the Act, 2004 and not taken any cognizance for the offence under the said Act. Section 9 of the Act confers all powers and the same vests with the Government. In the case on hand, the learned High Court Government Pleader would vehemently contend that an amount of Rs.385 Crores was collected by the petitioner herein and not allotted any flats. Hence, the State has attached the properties and the notice is also issued against the petitioner under Section 12 of the Act, 2004. The very petition itself is not maintainable.

16. The learned High Court Government Pleader would vehemently contend that if any order has been

passed invoking Section 12 of the said Act, an appeal lies under Section 16 of the Act, before this Court. This is an alternative remedy provided to the persons, who suffered at the hands of the petitioner and the matter is still pending before this Court with regard to which, the Act will prevail. Hence, there cannot be any quashing of the proceedings.

17. Having heard the learned counsel for the petitioner and the learned High Court Government Pleader for State, this Court has to take note of the factual aspects of the case on hand and the prayer sought in the petition which has been filed invoking Section 7(1) of the Act, 2004, wherein the prayer is made before the Special Court to accord permission to the respondent herein to submit the report to the Special Court and accept the same as required under Section 7(1) of the Act, 2004 and further permit the respondent herein to submit any other assets and deposit liability that may come to his notice in due course of his duties for necessary action to be initiated under the Act. It is also to be noted that an allegation is

made in the petition that the petitioner herein had indulged in collecting an amount of Rs.385 Crores from 3668 depositors and investigation discloses that they are due to the tune of Rs.385 Crores. The interim order of attachment of the Government discloses that value for the assets of the said Dreams Infra Limited is around Rs.100 Crores. Hence, the petitioner is required to file a petition under Section 7(1) of the Act, 2004 reporting deposit liabilities and the assets of the petitioner herein.

18. Having perused the petition filed before the Special Court invoking Section 7(1) of the Act, the prayer sought is only with regard to seeking permission to submit a report with regard to assets and liabilities that may come to the notice of the petitioner/respondent herein in due course of his duties. The judgment quoted by the petitioner's counsel reported in ILR 2010 KAR 328 is not applicable to the case on hand, wherein the Court has discussed with regard to non-application of procedure as contemplated under the Act. Learned counsel for the petitioner also relied upon the judgment reported in ILR

2018 KAR. 4125 wherein it is sought for quashing the criminal prosecution initiated against the petitioners therein who have not refunded a sum of Rs.66,27,282/- to the various depositors who have deposited the said amount with the said Cooperative Societies and the same is also not applicable to the facts of the case on hand. In the case on hand, Annexure-C discloses that memorandum of association of petitioner herein discloses that object for which the Company is established is to purchase or otherwise to acquire land or house building and other properties and maintain, sell, allot houses, apartments, flats or part thereof to the shareholders or any other person on such terms and conditions as may be deemed fit by the Company. The petitioner-Company is also not disputing the fact that they have collected the money and they have neither refunded the money nor allotted the flats to the homebuyers, who invested the money. Hence, the main contention of the petitioner's counsel that the petitioner is not the financial establishment and thus, the Act, 2004 is not applicable, cannot be accepted.

19. The Court has to take note of statement of objects for bringing the enactment. The very object is to prevent committing default in return to the public, the deposits on maturity and thereby cheating the depositors of their legitimated due. The term "default" to include fraudulent failure to return the deposits or pay interest, bonus and profit or perform service promised. The term "deposit" is defined under Section 2(2) of the Act, which includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either by cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form.

20. Having perused the definition and also the object of the enactment, the very contention of the petitioner cannot be accepted. However, it has to be noted that the State Government has appointed competent authority and passed an order of attachment of property

and consequent upon the appointment, the competent Authority has approached the Special Court invoking Section 7 of the Act, 2004 with regard to assessment of assets and deposit liabilities. It has to be noted that the said petition is filed before the Special Court on 30.12.2019. Learned counsel for the petitioner also brought to the notice of this Court that NCLT has passed an order on 20.08.2019 against the petitioner herein when some of the investor/homebuyers have approached the NCLT. The respondent also not disputes the said fact. Some of the homebuyers have already approached the NCLT and an order has also been passed on 20.08.2019.

21. Having perused the order invoking the provisions of IBC, 2016, the same was admitted by initiating Corporate insolvency resolution and Ashok Kriplani was appointed as Interim Resolution professional in respect of the Corporate Debtor to carry on the function as mentioned under the IBC, 2016. It is also important to note that the moratorium is also declared and the IRP is directed to file a progress report to Tribunal from time to

time. The Board of Directors and all the staff of the Corporate Debtor are directed to extend full cooperation to the IR in carrying out its functions. The NCLT also passed a common order on 17.12.2019. The authorized representative Sri. Hari T. Devadiga filed an application under Section 22(3)(b) read with Section 16 of the IBC, 2016 read with Rule 11 of NCLT Rules, 2016 *inter alia* seeking to appoint the proposed RP Mr. Konduru Prashanth Raju as Resolution Professional in terms of Section 22(3)(b) of IBC, 2016, in place of Mr. Ashok Kriplani, IRP/RP. When already the matter has been ceased before the NCLT and Resolution Professional is appointed invoking IBC, there is force in the contention of the petitioner's counsel that matter has been ceased and the liabilities and assets are to be considered by the NCLT.

22. It is also important to note that the Apex Court in Innoventive Industries Limited's case had discussed with regard to the repugnancy of State law and in **Anand Rao Korada, Resolution Professional's** case, the Apex Court discussed with regard to Sections 14 and Section 238 of

the Code in respect of the moratorium which has got overriding effect over other laws and so also in ***Alchemist Asset Reconstruction Company Limited's*** case, the Apex Court held that the IBC prevails over the State enactment. In the case on hand, already the matter has been seized before the NCLT before initiating the present proceedings. The Apex Court recently in ***J.Manivannan's*** case held that there cannot be any other civil proceedings when the matter has been ceased and already some homebuyers have approached the NCLT and so also the Resolution Professional was also appointed. Under the circumstances, I am of the opinion that there is a force in the contention of the petitioner's counsel that the provisions of the IBC is having overriding effect over other laws and the same would prevail in view of Section 238 of the Code. Hence, the petitioner has made out grounds to quash the proceedings initiated against the petitioner under Section 7(1) of the Act, 2004.

23. In view of the discussion made above, I pass the following:-

ORDER

(i) The writ petition is hereby allowed.

(ii) The proceedings initiated against the petitioner herein in Miscellaneous No.2/2020 are hereby quashed.

(iii) The other reliefs sought to hand over the properties to Sri. Ashok Kriplani Resolution Professional does not arise as he has already been replaced by the NCLT vide its order dated 17.12.2019.

(iv) The petitioner can seek appropriate order/orders from the NCLT where the matter is still pending.

(v) The respondent can also proceed in accordance with law after the disposal of the matter pending before NCLT, if need arises.

**Sd/-
JUDGE**