

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

C.P. (IB) No.84/BB/2019
U/s 7 of IBC, 2016
R/w Rule 4 of I&B(AAA) Rules, 2016

In the matter of,

Pratap Chandra Padhy

S/o Late Biswanath Padhy

House No.64 Srinivasa Nilaya,

Ground Floor, 3rd Cross

Ashwathnagar, RMV 2nd Stage,

Sanjay Nagar Post,

Bengaluru - 560 094 and 2 others- Petitioners/Financial Creditors

Versus

M/s.Dreamz Infra India Limited

577/B, 2nd Floor, Outer Ring Road,

Teachers Colony, Kormangala,

Bangalore - 560 034.

- Respondent/Corporate Debtor

Date of Order: 20th August, 2019

- Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsels Present:

For the Petitioner : Shri Aruni Poddar

For the Respondent : None

ORDER

Per: Rajeswara Rao Vittanala, Member (J)



1. C.P.(IB)No.84/BB/2019 is filed by Pratap Chandra Padhy & 2 others (**Petitioners / Financial Creditors**) U/s 7 of IBC, 2016, R/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of **M/s.Dreamz Infra India Limited, (Respondent/Corporate Debtor)** on the ground that the Corporate Debtor committed a default in payment of Rs.40,06,625/- (Rupees Forty Lakhs Six Thousand Six Hundred Twenty Five Only).
2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:
 - 1) Mr.Pratap Chandra Padhy and 2 others (Petitioners/ Financial Creditor) having its registered address at House No.64 Srinivasa Nilaya, Ground Floor, 3rd Cross, Ashwathnagar, RMV 2nd Stage, Sanjay Nagar Post, Bengaluru - 560 094.
 - 2) M/s.Dreamz Infra India Limited (Respondent/ Corporate Debtor/) was incorporated on 16.01.2012 having registered address at: 577/B, 2nd Floor, Outer Ring Road, Teachers Colony, Kormangala, Bengaluru, Karnataka 560 034. The Authorized Share capital of the Corporate Debtor is Rs.100000000/- and the paid up share capital is Rs.20000000/-.
 - 3) It is stated that in the year 2014, the Corporate Debtor floated housing project by the name Dreamz Sumadhur and the marketing agent of the Corporate Debtor contacted the home buyers individually at different period of time. It was represented by the Representatives of Corporate Debtor that



the Company is known for excellent housing project and is developing affordable housing living spaces at Bengaluru. And it makes use of state of the art engineering and construction technologies, which makes the house affordable in low budget. Allured by the budgeted price of the housing project, the financial creditors deposited their hard-earned money for purchase of flats.

- 4) It is stated that the project was promised to be started from 2014 and possession was promised to be delivered in the year 2018. As per scheme, the buyer had to pay nearly 50% of the value of flat in instalments for floor allotment and rest of the amount had to be given by the buyers at the time of possession of flat. The buyers including the financial creditors were made to deposit as per the above terms, and they were issued receipt for the same. During the year 2014, land development, plotting and some construction activities were carried out with good pace to win the confidence of financial creditors, so as to make them believe that their dream home is not very far and make them keep paying after initial amount of booking being made by financial creditors.
- 5) That once the payment as aforesaid was made by the financial creditors and host of other home buyers, after the month of November, 2015, turbulence starting taking place at the project and by February, 2016, the responsible officers of the Corporate Debtor started vanishing from the office and all efforts to reach out the Managing Director of the Ccorporate Debtor went in vain. Even the Registered office of the corporate debtor was found to be locked and

the project 'Dreamz Sumadhur' left un-attended. The mass complaint was filed with the Police by many homebuyers in the month of August, 2016. As of today, except some foundation work, nothing has improved till date and thousands of homebuyers are put in lurch and running from pillar to post and at the mercy of police.

- 6) It is stated that the Financial Creditors are suffered of mass fraud whereby the Financial Debtor had floated, one after one project, under the trade name 'Dreamz' and collected huge sum of money. By layering of funds and accounts, crores of rupees were raised by the Financial Debtor from many customers/financial Creditors. All efforts have been made to deprive homebuyers of the Corporate Debtor from their rightful share of money, which they have deposited with the Company in the hope of getting the flat at budgeted price. Even various criminal proceedings have been initiated against the Corporate Debtor and the properties of the Corporate Debtor are under attachment by the police tec. Under such circumstances, financial creditors do not see any hope that Corporate Debtor will be able to deliver the flat booked with it.
- 7) It is stated that the Financial Creditors say that the Corporate Debtor is not in position to deliver the flats and fulfil the contractual obligations and there is no sign of any construction activity on the site as the Directors of the Company are absconding. There is no managerial person available on site and the Directors are hiding in view of numbers of criminal complaints registered against the Company and its Directors.

- 8) It is stated that the above mentioned circumstances, Financial Creditors, through their counsel, served legal notice dated 29.09.2018 upon the Corporate Debtor asking them to refund the amount received by it along with interest and damages. On receipt of above notice, the Corporate Debtor, although admitted the debt amount stated in the notice but chose to file dicey reply and claimed that the project will be delivered by 2021 or latest by 2022. The requests were made by the Company to wait for the period of four years. The claim was made in the reply was that the amount taken from the home buyers by the Company was properly utilized for construction of the project.
- 9) It is stated that the Corporate Debtor has duped not only the financial creditor/homebuyers but thousands of similarly placed person, who booked the flats with the Corporate Debtor. All effort of home buyers/financial creditors to recover the amount paid against the booking of the flats has not yielded any result so far. The arrangement of buying the flats has come to end as the Corporate Debtor has failed to construct the project and further such arrangement is terminated expressly by the notice dated 29.09.2018 by the Financial Creditors. The Corporate Debtor, although has admitted the debts but neglected in paying back the amount as demanded in the notice by financial creditors/homebuyers.
- 10) It is stated that the applicants fall within the definition of the financial creditor U/s 5(7) of the Code as amended, the amount paid by them to the corporate debtor falls under



the definition of financial debt U/s 5(8) of the Code and failure of the corporate debtor to allot flats/home to the home buyers or refund their investment is a default under the Code. The Corporate Debtor has failed to pay refund of amount, as claimed in the notice dated 29.09.2018 and thus it is clear case of neglect to pay the amount even after admitting the same is made out. The Corporate Debtor has failed to pay the undisputed amount due to the applicants/financial creditors.

- 11) It is stated that upon promulgation of the Insolvency Bankruptcy Ordinance, 2018, explanation to Section 5(8) (f) has been added to the IBC, 2016 so as to include any amount raised from all allottee under a real estate project within the purview of financial debt. The said explanation to Section 5(8)(f) clearly states that amounts raised in real estate projects from allottee shall be deemed to be an amount having the commercial effect of a borrowing. The applicants are allottees of flats and hence covered under the provisions of Section 5(8) of IBC and hence entitled to initiate the proceedings under IBC, 2016.
- 12) It is stated that the admitted debt of Rs.40,06,625/- only of three financial creditors/homebuyers against the financial debtor is beyond reasonable doubt. The Corporate Debtor has failed to repay back admitted debt of the financial creditor, even if Corporate Debtor has admitted the same. All effort has yielded no result to recover money from Company and thus the Corporate Debtor is liable to be proceeded under the said Code, 2016 becoming insolvent. The Company is just liable to be proceeded under the Code



as it has failed to pay its debts which is of financial nature. The Financial creditors No.1 has authorized the financial creditor no.2 through Power of Attorney to file and pursue the present Petition.

3. The Respondent has filed Statement of Objection dated 20.04.2019, by inter alia contending as follows:

- 1) It is denied that any allurements of budgeted price of housing was ever given to the financial creditors. The decision taken by Financial Creditor are on the basis of offer made by the Company and after visiting the site of construction. The Corporate Debtor had no mala fide intention at all to dupe any home buyer. The Company had track record of delivering the houses and in fact has good track record in delivering the flats in time in respect of some project.
- 2) It is submitted that the project was started in the year 2014 and the possession of the property was agreed to be delivered in the year 2018. However, the home buyers did not pay in time leading to the delay of the project. Such delay is attributable to the Home Buyers including the financial creditor. As far as, the amount referred by the financial creditor cannot vouch as correct and is disputed by the Company. It is denied that the financial creditor No.1 was allotted 2BHK apartment at Rs.20.00 lakhs. It is denied that financial creditor no.2 was allotted 3BHK flat at Rs.28.00 lakhs and the financial creditor No.3 was allotted flat at Rs.2200 lakhs. The respondents are not in position vouch the veracity or genuineness of the document relied upon.



- 3) It is stated that the project under question could not be booked for full and that is why delay took place in construction activities. It is submitted that the amount invested in the project is much more than the amount received on the project. 3 financial creditors have paid only small amount of Rs.40,06,625/- compared to the huge payment payable by them till date. The turbulence took place in the Company not due to the fault of the management but due to slack prevailing in the Real Estate Market. It is vehemently denied that the directors of the Company are absconding. It is denied that the Managing Director of the Company is not to be found. All efforts has been made by the respondent to commence the construction earliest possible. The Company is in process of raising fund but due to multiplicity of litigation the work is getting delay. On commercial flat although Company is trying its best but due to the overall economic slowdown the project is getting delay. The Respondent undertakes the Tribunal that the work will be commenced within a period of six months and all arrangement are underway. There is no case made out under the provisions of Code. All other home buyers are cooperating with the Company and has not initiated any such proceedings before the Court of Law and Tribunal. Few consumer cases are being filed, which are being defended by the Company. As far as, filing of FIR is concerned, the Respondents are not in position to verify the FIR and hence it is denied.
- 4) It is denied that the Corporate Debtor is not in position to deliver the flat and fulfill the contractual obligation. As a



matter of fact, the project has its land, which is in value much more than the liability it owes to the project. In comparison to the self-admitted Rs.40,06,625/- the value of land will run into crores of rupees alone. It is wrong to say that there is no work at all. The present petition is scandalous one and motivated to compel the Company to budge to the blackmailing by the Financial Creditor.

- 5) It is stated that the legal notice served by the financial creditor has been replied by a letter dated 03.10.2018 in which the corporate debtor has explained in detail the solution to the doubt raised by the financial creditor. There is no basis for saying that the project will not be completed. It is put on record that money taken from the home buyer is properly utilized for the construction. There is no case made out for refund of money as claimed and the application is filed only with a view to compel the Respondents to pay back money along with non-qualified interest and penalty. In any case, the project is likely to be delivered by 2021. The present status of the project is filed by way of photograph for the perusal of this Court.
- 6) It is submitted that the amount received from the home buyers including the Petitioners are properly utilized and invested by the Company in the project and hence there is no ground to say that the Respondents have misutilised the fund. The land value of project (Dreams Sumadhur) runs into crores and the money of the home buyers are safe. It is wrong to say that the home buyers fall within the definition of Financial Creditor under Section 5(7) of the IBC. The quantum as claimed by the Financial Creditor does not



justify filing of the proceeding under IBC. The money has been raised for the construction of a flat under budgeted scheme and the flat was about to be delivered by the end of the 2018. It is due to unavoidable circumstances the project got delayed and such delay is not intentional. The corporate debtor further says that the home buyers cannot maintain the present petition against the Corporate Debtor as alleged in the petition. It is denied that Corporate Debtor was under obligation to repay the amount taken for allotment of housing. The Financial Creditor has not submitted documentary evidence supporting their claim.

- 7) It is stated the provision of Section 5(8)(f) of IBC, 2016 is not applicable in the instance case, there was no agreement for return of money in absence of allotment. The net worth of the Company is much more than the liability from the three financial creditors or the entire (sumadhur) project as a whole. The present petition is motivated under the instruction of the competitors of the Company. It is denied that the Company is unable to pay its debt. which is of a financial nature. The present Petition is not maintainable under Section 7, R/w Rule 4 of IBC, 2016.
4. Heard Shri Aruni Poddar, learned Counsel for Petitioner. None appears for the Respondent. We have carefully perused the pleadings of the parties and extant provisions of the Code and the law.
5. Shri Aruni Poddar, learned Counsel for the petitioner, while reading out contents of various documents filed along with Company petition, has further submitted that the instant petition



is filed strictly in accordance with law and Debt and default in question is admittedly, not in dispute and a qualified Resolution Professional namely, Shri Ashok Kriplani bearing IP Regn. No.IBBI/IPA-003/IP-N00009/20160-2017/10071 is suggested to appoint him as IRP , who has filed his Written consent in Form 2 dated 13.02.2019, by inter declaring that he is eligible to be appointed as a Resolution Professional in respect of the Corporate Debtor and that there are no disciplinary proceedings is pending against him with the Board or ICSI. Therefore, the Learned Counsel for Petitioner urged the Tribunal to admit the case by initiating CIRP in respect of Corporate Debtor with all consequential orders.

6. The case is being listed for admission on various dates viz. 12.03.2019, 13.03.2019, 09.04.2019, 25.04.2019, 31.05.2019, 19.06.2019, 17.07.2019, 29.07.2019 & 20.08.2019. The case is adjourned on all these dates at the request of parties for one reasons or the other including for settlement of the issue, as the Respondent claimed that it is solvent Company. However, the Respondent is not able to resolve the issue in question despite affording ample opportunities for the same. Therefore, there is no other alternative option for the Adjudicating Authority except to decide the case for admission as per merits.
7. As stated supra, it is not only the case of the petitioners herein who are aggrieved by action of Respondents and there are several other people, who are stated to have approached other judicial forums. Admittedly, the Corporate Debtor failed to complete the project as per Agreement/Contract made between the parties. The Respondent just denied the debt and default in without



substantiating it with evidence. Therefore, the contention of the Respondent that they are solvent, and would hand over the possession of plots in a prescribed time is hardly tenable. The Respondent committed a default in respect of several cases. Another case is filed by Chandrasekhar and 3 others, vide C.P(IB) No.148/BB/2019 Mr.Chandrashekar and 3 others U/s 7 of IBC, 2016, R/w Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by inter-alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of **Dreamz Infra India Limited, (Respondent/Corporate Debtor)** on the ground that the Corporate Debtor committed a default in payment of Rs.1,64,43,187/- (Rupees One Crore Sixty Four Lakhs Forty Three Thousand One Hundred Eighty seven Only).

8. The Learned counsel for Petitioner has also filed Additional Affidavit dated 15.07.2019, by inter alia stating that on finding that the project is getting delayed and no substantial construction activity has taken place, around more than 100 home buyers protested in the office of the Corporate Debtor at Silk Board, Bangalore with demand of resuming the construction work or refund of the deposited amount with interest, and upon agitation of the homebuyers, the Corporate Debtor issued a common letter dated 20.11.2016, whereby they undertook that those, who do not want to continue with the project will be refunded their entire deposit amount @ 8% by 05.01.2017. The Corporate Debtor further undertook that in case, the project is not completed within 14 months from the date of issue of this letter dated 20.11.2016 with further grace period of three months, then the homebuyers would be entitled for refund with interest @ 8%. It was further undertaken that in case the possession of the project is further



delayed beyond 14+3 months, homebuyers would be paid interest rate of 25% till completion of the project.

9. The petitioner have booked the flat with the Corporate Debtor, 2BHK Apartments (1025 sq. ft. for Rs.20.00 lakhs, Flat No.211, 2nd floor) vide Booking Form No.3931 dated 12.02.2014. Time to time, the deponent made the payments and accordingly MOU dated 17.02.2014 was executed between the deponent and Corporate Debtor. That the above said MOU was followed by Agreement to Sale dated 19.09.2015 and Construction Agreement dated 22.09.2015. It is also placed on record that Dreamz Sneh Customers Welfare Association (Complainant) has filed a case against the same Corporate Debtor Company i.e. M/s.Dreamz Infra India Ltd and Anr., before the National Consumer Disputes Redressal Commission, New Delhi vide Consumer Case No. 360 of 2018, and another C.C No. 2749 of 2017, and the same are stated to be pending.
10. So far as the law with regard to initiation of CIRP is concerned, Hon'ble NCLAT vide order dated 15th May, 2017 passed in Company Appeal (AT) (Insolvency) No.1 & 2/2017 in the case of M/s.Innoventive Industries Ltd Vs. ICICI Bank & Anr., has dealt with the issue of admission of a case, filed under Section 7 of the Code, under Paras 55 to 58, which are extracted below:
- "55)Process of initiation of Insolvency Resolution Process by a financial creditor is provided in Section 7 of the I&B Code. As per sub-section (1) of Section 7 of the I&B, the trigger for filing of an application by a Financial Creditor before the Adjudicating Authority is when a default in respect of any financial debt has occurred. Sub-section (2) of Section 7 provides that the Financial Creditor shall*



make an application in prescribed form and manner and with prescribed documents, including:

- i. "record of the default" recorded with the information utility or such other record or evidence of default as may be specified;*
- ii. The name of the resolution professional proposed to act as an interim resolution professional; and*
- iii. Any other information as may be specified by the Board.*

56) The procedure once an application is filed by the financial creditor with the Adjudicating Authority is specified in sub-section (4) of Section 7 to sub-section (7) of Section 7 of the Code. As sub-section (4) of Section 7 of the I&B Code:

"(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the Financial Creditor under sub-section (3)".

57) Sub-Section(5) of Section 7 of the I&B Code provides for admission or rejection of application of a Financial Creditors. Where the Adjudicating Authority is satisfied that the documents are complete or incomplete.

58) The Adjudicating Authority post ascertaining and being satisfied that such a default has occurred may admit the application of the Financial Creditor. In other words, the statute mandates the Adjudicating Authority to ascertain and record satisfaction as to the occurrence of default before admitting the application. Mere claim by the Financial Creditor that the default has occurred is not sufficient. The same is subject to the Adjudicating Authority's summary adjudication, though limited to 'ascertainment' and 'satisfaction'.



The Hon'ble Supreme Court has upheld the above judgment in Civil Appeal Nos. 8337-8338 of 2017 vide judgment dated 31st August, 2017. The Hon'ble Supreme Court has adverted to the Section 7, at para 28, which reads as under:

"28) When it comes to financial Creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the Corporate Debtor – It need not be a debt owed to the applicant financial Creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the I&B(AAA), Rules, 2016. Under Rule 4, the application is made by a Financial Creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the Corporate Debtor in Part II, particulars of the proposed interim Resolution Professional in part III, particulars of the Financial Debt in part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered Post speed post to the registered office of the Corporate Debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of the evidence furnished by the Financial Creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of the Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the Corporate

Debtor is entitled to point out also that a default has not occurred in the sense that the "debt", which may also include a disputed claim is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section 97), the adjudicating authority shall then communicate the order passed to the financial creditor and Corporate Debtor within 7 days of admission or rejection of such application, as the case may be."


- 11.** In the light of provisions of Section 7 of the Code, and law as declared by the Hon'ble NCLAT and Hon'ble Supreme Court as extracted above, the Adjudicating Authority/Tribunal has to examine the instant case with regard to Application/Petition is complete/incomplete, such default is supported by evidence; and has named IRP. As explained above, the instant Company Petition is filed strictly in accordance with provisions of section 7 of Code; suggested a qualified Resolution Professional namely Shri Shri Ashok Kriplani bearing IP Regn.No.IBBI/IPA-003/IP-N00009/20160-2017/10071 to appoint him as IRP, who is provisionally qualified to be appointed as IRP. Therefore, we are of the considered opinion that the Debt and default in question are not in dispute and thus it is a fit case to admit Petition by initiating CIRP in respect of Corporate Debtor with consequential orders/directions.

12. In view of the above facts and circumstances of the case, and the law as stated supra, by exercising powers conferred on this Adjudicating Authority, U/s 7(5)(a) and other extant provisions of the IBC, 2016, the following orders are passed:

- 1) CP(IB)No.84/BB/2019 is hereby admitted by initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Dreamz Infra India Limited, Corporate Debtor;
- 2) We hereby appoint Shri Ashok Kriplani bearing IP Regn.No.IBBI/IPA-003/IP-N00009/20160-2017/10071 as Interim Resolution Professional, in respect of the Corporate Debtor to carry on the functions as mentioned under the I&B Code, 2016.
- 3) The following moratorium is declared prohibiting all of the following, namely:
 - a. In 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. the supply of essential goods and services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period;
 - f. the provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government
 - g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process;
- 4) The IRP should follow all extant provisions of IBC, 2016 and the rules including fees rules as framed by IBBI. The IRP is hereby directed to file progress reports to the Tribunal from time to time.
- 5) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out his functions as such, under the Code and Rules made by IBBI.
- 6) Post the case for report of the IRP on **23rd September, 2019**


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL