

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 18.09.2020

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB) No. 211/BB/2019	For pronouncement of orders	Sec 7of I&B Code 2016	Sri Babu Phutane Sakamani & Ors	Nikhil Kurgod for N K Law Chambers	M/s Bhagya- lakshmi Homes LLP	Ravishankar P, Advocate

ADVOCATE FOR PETITIONER/s:

ADVOCATE FOR RESPONDENT/s:

ORDER

C.P No. 211/BB/2019 is rejected by separate order.


MEMBER (T)


MEMBER (J)

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IN THE NATIONAL COMPANY LAW TRIBUNAL

BENGALURU BENCH

C.P. (IB) No.211/BB/2019

U/s 7 of IBC, 2016

R/w Rule4 of I&B (AAA) Rules, 2016

Between

Shri BabuPhutaneSakamani,
#570, (New 102/1) Skanda Enclave,
2nd Floor, 43rd Cross, 1st Main,
Jayanagar 8th Block,
Bengaluru – 560 070
And 39 others

- Petitioners/Financial Creditors

And

Bhagyalakshmi Homes LLP,
1st Floor, Vikas Town,
Castle Street, Ashok Nagar,
Bengaluru – 560 025

- Respondent/Corporate Debtor

Date of Order: 18thSeptember, 2020

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

Parties/Counsels Present (through Video Conference):

For the Petitioner : Shri Sreevatsa, Senior Counsel
With Nikhil Kurgod

For the Respondent : Shri Ravishankar.P (Not present)

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. C.P. (IB) No.211/BB/2019 is filed by BabuPhutaneSakamani and 39 others (hereinafter referred to as 'Petitioners) under Section 7 of the IBC, 2016,R/w Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process in respect of M/s. Bhagyalakshmi Homes LLP (hereinafter referred to as 'Respondent/Corporate Debtor') on the ground that it has committed default for total



amount of Rs. 11,34,75,898/- (Rupees Eleven crores Thirty Four Lakhs Seventy Five Thousand Eight Hundred and Ninety eight only).

2. Brief facts of the case, as stated by the Petitioners, which are relevant to the issue in question, are as follows:

(1) M/s. Bhagyalakshmi Homes LLP (hereinafter referred to as 'Respondent/Corporate Debtor') is a company incorporated on 01.09.2014, under the Companies Act, 1956 having its registered office at 1st Floor, Vikas Tower, Castle Street, Ashok Nagar, Bengaluru – 560 025.

(2) The Financial Creditors through M/s. Karvy Realty (India) Limited, who is the Marketing Agent of the Corporate Debtor, have executed Agreements to sell, on various dates agreeing to severally purchase plots of various dimensions in the Corporate Debtor's projects by name "Golden Ira" in Doddballapur Taluk for valuable consideration of varying amounts.

(3) At the time of negotiations and execution of the said Agreement to sell, the Corporate Debtor has given an option to cancel the said agreement to sell through separate communication/letter address to the Financial Creditors inter alia agreeing to pay an exit premium ranging from Rs. 5,40,000/- (Rupees five Lakh Forty Thousand only) to Rs. 7,92,000/- depending on the quantum of initial advance consideration paid by each of the Financial Creditors. The Corporate Debtor agreed to pay the said premium amount along with the initial advance consideration within not later than 30 months from the date of payment of the advance initial consideration and the said 30 months period is inclusive of a grace period of six months. Further, the Corporate Debtor has also agreed to pay interest at the rate of 20%/22% (depending on the quantum of initial advance consideration) for the period of delay beyond 24 months. The said



cancellation offer was to be exercised by the Financial Creditors well within the prescribed time as provided under the agreement to sell.

- (4) The Financial Creditors/joint applicants have exercised their option to cancel the said agreement to sell and receive the initial advance consideration along with exit premium through M/s Karvy Realty (India) Limited, being the Marketing Agent for the Corporate Debtor. M/s Karvy Realty (India) Limited confirmed the same by way of a certificate. Further, the debt in the present case is a financial debt in terms of Section 5 (8) of the I & B Code, and the Applicants are the Financial Creditors in terms of Section 5 (7) r/w Section 5 (8) (a) of the code. However, the Corporate Debtor has not paid the said amounts (Initial Consideration + Exit Premium). Further, in terms of the cancellation option, in the event of delay in remitting the cancellation price by the Corporate Debtor, it was agreed between the Corporate Debtor and the Financial Creditors that the Corporate Debtor shall compensate the Financial Creditors by paying an interest at the rate of 20%/22% per annum on the initial advance consideration paid by the Financial Creditor at the time of execution of the Agreement to sell and such payment shall be paid upon completion of 30 months (including the grace period of six months) from the date of payment of initial consideration by the Financial Creditors. Subsequently, the Corporate Debtor vide e-mail in July/August 2018 addressed to the Financial Creditors by acknowledging the delay in repayment of initial consideration to the Financial Creditors in terms of the cancellation option and there by seeking four months' time for clearing the assured payments.

- (5) The Corporate Debtor has defaulted in performing its obligation as it has not repaid the initial consideration along



with assured exit premium and assured interest of 20%/22% per annum to the Financial Creditors till date, as per the terms of the cancellation option. It is stated that development activities in proposed project are also not completed as on date. The Corporate Debtor issued a few post-dated cheques to two Applicants viz., Smt. RekhaJagannath and Smt. VaishaliHange, however, the same was not encashed as per the request of the Corporate Debtor and the said cheques expired well before the presentation.

- (6) By virtue of exercising the cancellation option by the Financial Creditors, the initial consideration along with the exit premium and applicable interest calculated on the initial consideration, has become a Financial Debt repayable by the Corporate Debtor to the Financial Creditors. The total Financial Debt as on 30.04.2019 is to the tune of Rs.11,34,75,898/-. Hence the petition.
3. Heard Shri.Sreevatsa, learned Senior Counsel for the Petitioner through **Video Conference**. And none appears for the Respondent. We have carefully perused the pleadings of Party and the extant provisions of the Code, the Rules made thereunder, and the law on the issue.
 4. Shri Sreevatsa, learned Senior Counsel for the Petitioner, has once again reiterated the averments made in the Synopsis dated 25.08.2020, as briefly stated supra. He has asserted that the Petitioners have become Financial Creditors by virtue of exercising the cancellation option and thus initial consideration along with exit premium and applicable interest calculated on initial consideration. Therefore, the Petitioners are Financial Creditors in terms of definitions given under the Provisions of Code and the Respondent has committed default.
 5. The main points arise for consideration in the case are whether the Petitioners are Financial Creditors in terms of provisions of Code to



maintain the instant Petition, whether they have made out prima facie case in their favour to initiate CIRP as prayed for.

6. In the instant case, cause of action arise out of various Agreements of sale executed between the Petitioners and Respondent, on various dates in the year 2016/2017 for purchase of Plots in the Project by name 'GOLDEN IRA', and the alleged offer to cancel the Agreements of Sale in question. By Perusal of terms and conditions of Agreements of Sale in question, it is noticed that there is no condition for cancellation of Agreements in question was incorporated in those agreements, though it was comprehensive in all respects, but only clause 26 of the Agreement provide Dispute Resolution, in case any dispute arise between the Parties in respect of matters as set out in the Agreements. Moreover, the Agreements in question were not properly executed between the Parties, wherein it is interalia noticed that Witness column is blank. However, the Petitioners contend that at the time of negotiations and execution of Agreements of Sale in question, the Corporate Debtor had given an option to cancel the Agreements in question, through a separate communication /letter addressed to the Petitioners by setting terms for such exit. By perusal of letters of cancellation, which are enclosed to the Agreements in question, it is noticed, such cancellation letters are un-dated and the Authorised Signatures of Corporate Debtor, appear on the Agreements in question, and on these letters are quite different and distinct. Therefore, the very cause of action to file the instant Petition is in serious dispute. And defective/disputed Agreements and Letters of Cancellation in question, would not confer any rights on the Petitioners to contend that there is legally valid and recoverable debt from the Respondent.
7. In order to maintain an Application/Petition, U/s 7 of Code, it is necessary that the Petitioner is not only to be Financial Creditor, and the Corporate Debtor should have committed default of debt, which is legally payable and not yet paid. As stated supra, the basic

documents in support of the case are not even prima facie executed in accordance with law. Since the Respondent failed to file its Reply, though the matter was kept pending for a long time, the Adjudicating Authority is not in a position to ascertain the truth. And the documents enclosed by the Petitioners viz, Agreements of Sale, un-corroborated emails of even dated 4th July, 2018, stated to have sent by the Corporate Debtor to the Petitioners by interalia requesting the Petitioners to grant four months' time for re-payment. The Petitioners have filed Memo by enclosing a photo copy of Public Notice dated 20th June, 2020 of Times of India, showing that the Lands belonging to Corporate Debtor and other group Companies are stated to be under charge and lien with IDBI etc. Therefore, the Petitioners have not made diligent enquiry over the rights of Corporate Debtor on the lands of the Project in question, before entering into Agreements of sale in question. In case, the Respondent has cheated the Petitioners by false promises, they have to initiate appropriate criminal proceedings against the Corporate Debtor. The Petitioners have not placed any record to show whether they have approached any Authorities like RERA, Criminal courts, Consumer Courts etc. They have filed the instant Petition, even without substantiating prima facie case about debt and default in question.

8. In terms of Section 2 of the Code, the provisions of the Code will apply to; any Company incorporated under the Companies Act; Limited liability Partnership or other bodies in relation to their Insolvency, Liquidation, Voluntary Liquidation or bankruptcy as the case may be. The Petitioners have not placed any material to show the financial status of the Corporate Debtor, in the Company petition and also in the synopsis except stating that the Corporate Debtor has committed default, which is a financial debt. When the Respondent has not come forward to place its stand before the Adjudicating Authority, the Adjudicating Authority has directed the

Petitioner to place on record the details of the Corporate Debtor with regard to its financial status. However, the Petitioners have just filed a Memo dated 25.08.2020 by enclosing the extract of the Master data of the Corporate Debtor, Times of India Newspaper extract dated 20.06.2020, Form -2 IRP and the financials of the Corporate Debtor. By perusal of the financial status of the Corporate Debtor filed by the Petitioner, it shows that, as per the Balance Sheet as at 31.03.2019, the total Liabilities of the Corporate Debtor is Rs.1,689,334,807/- which includes only the current liabilities of due amounting to Rs.1,689,334,807/- and the total Assets of the Corporate Debtor is aggregating to Rs.1,689,334,807/- which includes loans and advances of Rs.13,915,843/-, Inventories of Rs.1,547,377,720/-, Cash and Bank Balances of Rs.126,493,244/- and Deposits of Rs.2,048,000/-. Therefore, the Corporate Debtor is not prima facie to be in Insolvent position in order to initiate CIRP as prayed for. It is not enough for the Petitioners to contend that the Corporate Debtor has committed default for the alleged outstanding amount of the Petitioners; the Petitioners have to satisfy the Adjudicating Authority with reference to other parameters as prescribed under the provisions of the Code.

9. As stated supra, the main Agreement of Sale contains only the Dispute Resolution, it did not contain any condition with regard to the cancellation of the plots and by reading the Agreements of Sale, it only indicates that the Corporate Debtor has to complete the project in a prescribed time frame. However, the Agreements of Sale and the letters of cancellation of the Agreement, were not properly executed as detailed supra. Therefore, it cannot give any cause of action for the Petitioners to file any application/petition under the provisions of the Code. The procedure prescribed under the Code is summary in nature and the Adjudicating Authority is not supposed to make roving enquiry in disputed question of facts. The Petitioners cannot simply invoke provisions of the Code, without prima facie

proving that there are legally executed documents in order to raise debt in the first instance. Therefore, the Adjudicating Authority cannot decide the veracity and legibility of the material documents in the instant Company petition. Admittedly, the Petitioners have also not taken any alternative remedy for Dispute Resolution, in terms of the Agreements of Sale. In terms of Agreements in question, the Petitioners prima facie have right for completion of the project in question. Therefore, the Petitioners, instead of availing other alternative remedy available under law, have rushed to the Adjudicating Authority, without even substantiating the financial debt in question as stated supra.

10. For the aforesaid reasons and circumstances of the case, and Law on the issue, we are of the considered opinion that the Petitioners have failed to make out any prima facie case so as to initiate CIRP in respect of the Corporate Debtor, and thus the instant Company Petition is liable to be rejected.

11. In the result, **C.P (IB) No. 211/BB/2019** is hereby rejected. However, this order will not come in the way of Petitioners to invoke any other remedy available to them in terms of Agreements of sale in question, and under any other law. No order as to costs.

(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL

(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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