

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

I.A No. 253 of 2022 & I.A No. 257 of 2022
In
CP (IB) No.21/BB/2020
Under Sections 42 and 60 (5) of IBC, 2016
R/w. Rule 11 of the NCLT Rules, 2016

IN THE MATTER OF I.A 253 OF 2022

Smt. D.Bhagavathidevi & Ors., ... Applicants
And

IN THE MATTER OF I.A 257 OF 2022

Canopy Crest IRS Flat Owners Association ... Applicants

Versus

Mr. Girish Kambadaraya,
No. 207, Bindu Galaxy,
No. 2, 1st Main, Chord Road,
Industrial Town, Rajaji Nagar
Bangalore 560 010

... Interim Resolution Professional/Respondent

Order delivered on: 09.06.2023

Coram: 1. Hon'ble Justice (Retd.) T. Krishnavalli, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the Applicant in
I.A.No.253 & 257 of 2022 : Shri Ashok Naik
Resolution Professional : Shri Girish K.

O R D E R

Per: T.Krishnavalli, Member (Judicial)

1. This Application in I.A No. 253 of 2022 Application has been filed on 01.07.2022 by **Smt. D.Bhagavathidevi & Ors.,** (Applicants), U/s. 60(5) of the IBC, 2016 R/w. Rule 11 of the NCLT Rules, 2016 against Mr. **Girish Kambadaraya,** IRP of Corporate Debtor (Respondent), seeking to Confine CIRP to the Particular Project i.e. Canopy Signature, and cannot affect any other project, of the same. The applicants in the I.A are the Land owners of the Canopy Crest Classic Project.

2. The Canopy Estates Pvt.Ltd (Corporate Debtor) has undertaken three projects namely Canopy Crest Signature, Canopy Crest IRS and Canopy Crest Classic.
3. Brief facts of the case, which are relevant to the issue in question, and as narrated by the applicant are as follows:

1. This Adjudicating Authority has admitted C.P.(IB)No. 21/BB/2020 vide Order dated 06.06.2022, by initiating CIRP in respect of the Corporate Debtor, imposing moratorium and Shri Girish Kambadaraya was appointed as the IRP.

2. It is submitted that a public announcement was made on 10.06.2022 and the IRP is in the process of collection of claims against the corporate debtor, determination of the financial position of the corporate debtor and to constitute a COC. The Applicants was seeking clarification from the IRP regarding the project “Canopy Crest Classic”, not coming within the purview of said order, and therefore they are not required to submit the claims.

3. It is submitted that the applicants are five sisters and co-owners who purchased the land jointly to construct house. Due to lack of infrastructure required for the development, the land owners and the Developers/CEPL decided to go for Joint Development with a developer. They chose the corporate debtor for developing the properties. The properties are more fully described in the Schedule to the Joint Development Agreement dated 17.06.2010 (Schedule Property), and they are the absolute land owners in the project “Canopy Classic”, developed by Canopy Estates Pvt. Ltd. The JDA was registered on 21.06.2010 and the general power of attorney was in the favour of the developer.

4. As per the terms of the JDA, all the documents of the schedule property in original was handed over to the developer for obtaining necessary sanctions and plan approvals. Further, it was agreed that the developer would be developing the schedule property into a multi storied apartment and would offer to owners 30% of the super built-up area in the said development, in consideration of owners permitting the developer to sell the remaining 70%. It was also agreed that the land owners will not interfere or interrupt in the course of construction. Further, the developer

at its cost and with its responsibility and expenses for preparing the plans and permissions; was required to complete the construction.

5. It is submitted that the developer also would be entitled to modify the plan submitted or submit a fresh plan without altering the entitlement of the owners share under this agreement. Further, owners are fully indemnified and harmless against any loss, liability that may arise against the owners or owners constructed area. It is further stated that the developer will be entitled to enter in to agreements for sale, to transfer 70% of the undivided share in the schedule property along with the proportionate share in the built up area with persons intending to own units; and enter in to construction agreement with such intending unit holders.

6. However, the developer failed to complete the construction of buildings and complete the project Crest Classic. The developers had constructed almost 85% of their super built-up area (70%), but they had completed construction only of approximately 5% of the owners constructed area (30%). Thus, the developer completely left the land owners area without construction, and suspended the execution of the project. The land owners are seriously affected and borrowed from all sources to complete their project.

7. It is submitted that the Corporate debtor through an email dated 06.02.2020 expressed its inability to continue the project and expressed inability to pay damages/compensation awarded in the Arbitration Award. According to the Award dated 19.08.2019, the land owners were entitled to Rs.9.35 Crores if the developer failed to complete their portion of construction. In the Arbitration, Land owners sought for cancellation of JDA, GPA and returning the original document but it was not addressed. Aggrieved against this award land owners approached the Court of the Principal City Civil Judge at Bangalore which is pending. Further, the aggrieved flat purchasers have moved before NCDRC claiming for compensation and the same is pending.

4. The learned Counsel for the Respondent, RP has filed objection vide memo no. 4101 dated 28.09.2022, by contending that project-wise CIRP is not contemplated under the IBC, 2016. Further, the plan submitted by the

Resolution applicant will be in respect of the entire business of the Corporate Debtor and not project wise. The RP submits that as per Reg. 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 a prospective Resolution Applicant may submit Resolution Plan. In such circumstances, the claim of the applicant to confine CIRP to particular project is not envisaged under IBC. Further, submits that the claims have been submitted by Operational Creditors, financial creditors, home buyers and other creditors of the corporate debtor and the CoC has been constituted by the IRP on 29.06.2022 comprising financial creditors of the entire company.

5. The learned Counsel for the petitioner filed rejoinder dated 5049 dated 24.11.2022 which is taken on record. The petitioners have reiterated their submission made in respect of the Canopy crest Classic Project, and the default on the part of the Developer with regard to this project. Further, the applicant has relied on the judgments as under
 1. *Swiss Ribbon Pvt. Ltd vs Union of India (2019) 4 SCC 17*
 2. *Flatbuyers Association Winter Hills-77 Gurgaon Vs. Umang Realtors Pvt Ltd, & Ors. (2020) ibclaw.in 166 NCLAT*
6. Heard learned Sr. Counsel for the Applicant and for the Liquidator. We have carefully perused the pleadings on record by the respective parties.
7. It is pertinent to refer here to the judgment dated 04.02.2020 passed by the Hon'ble NCLAT in the matter of Flat Buyers Association Winter Hills – 77, Gurgaon vs. Umang Realtech Pvt. Ltd. through IRP & Ors. in Company Appeal (AT) (Insolvency) No.926 of 2019 wherein it is inter alia held that a Corporate Insolvency Resolution Process (CIRP) against a real estate Company would have to be limited to only the concerned project to which the Financial Creditor or Operational Creditor who initiated the CIRP related to, and will not affect other projects undertaken by it.
8. Further, the Hon'ble NCLAT in a recent judgment dated 10.06.2022 in the matter of Ram Kishor Arora Suspended Director of M/s. Supertech Ltd. vs. Union Bank of India & Anr. in Company Appeal (AT) (Insolvency) No.406 of 2022, inter alia opined that in CIRP Process, Project-wise Resolution has to be started as a test to find out the success of such Resolution and allowed the IRP therein to constitute the CoC with regard to the Project Eco Village II only.

9. It is also noted in the order passed by this Adjudicating Authority on 15.02.2023 in the CP (IB) No.83/BB/2021; the CIRP was directed to be initiated against the particular “Dreamz Sneha” Project of the corporate debtor, i.e. Dreamz Infra India Limited.
10. We have carefully considered the facts and circumstances and the above mentioned judgments of Hon’ble NCLAT. It is noticed from the order under section 9 of the IBC dated 06.06.2022 in CP(IB) No. 21/BB/2020; that the contract agreement was between the Operational Creditor and the Corporate Debtor for the projects called the “Signature Block” and “Community Service Block” of Shalom Canopy Crest. Hence, this Tribunal is of the considered opinion that the CIRP initiated by this Tribunal vide its order dated 06.06.2022, should be interpreted and read in relation to **the Project Canopy Signature** only and not in other projects which are separate at different places of corporate debtor, so that CIRP in question initiated by the Adjudicating Authority, would be concluded in terms of extant provisions of Code. Accordingly, the RP is directed to take appropriate action in accordance with extant provisions of Code and the Rules made thereunder and to confine the CIRP in respect of the Corporate Debtor to Canopy Signature Project only. Therefore, the **I.A No. 253/2022** is hereby **allowed**. However, this order shall not preclude the applicant from pursuing other remedies in accordance with law, if so advised.

I.A. No.257 of 2022

1. The present application is filed on 12.07.2022 by the “Canopy Crest IRS Flat Owners” inter alia seeking to confine the CIRP to the particular project i.e. Canopy Crest-Signature and not to affect any other Project of the corporate debtor in any other places.
2. It is clear from the objections filed by the RP vide Diary No. 4100 dated 28.09.2022, stated that the corporate debtor has completed the project and possession has been given before obtaining the occupancy certificate; and stated that only a few minor works are pending regarding “Canopy Crest IRS Project”. This Tribunal in the order passed today in I.A. No. 253 of 2022 has held that the CIRP initiated on 06.06.2022 in CP(IB)No.21/BB/2020; against Canopy Estates Pvt. Ltd is limited to the Project Canopy Signature and not other projects which are separate at different places. In this order, the

issue regarding the confining the CIRP to particular project has been dealt with. Considering the reasons discussed in that order, this I.A. 257 of 2022 becomes infructuous.

3. Hence **I.A. No. 257 of 2022 is dismissed as infructuous.**

-Sd/-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

-Sd/-

**T. KRISHNAVALLI
MEMBER (JUDICIAL)**