

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH BENGALURU**
*(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)*
(Through web-based video conferencing platform)

C.P. (IB) No.113/BB/2022
U/s 7 of I &B Code, 2016
R/w Rule 4 of I&B (AAA) Rules, 2016

In the matter of:

Apartment Buyer's Consumer Association

No.31,II Main,Gururaja Layout,
Behind Vidyapeeta Temple,
Thyagarajanagar,
Bangalore-560028

... Petitioners /Financial Creditors

Versus

M/s. Dreamz Infra India Limited

577/B, 2nd Floor,Outer Ring Road,
Teachers Colony,Koramangala
Bangalore- 560034.

... Respondent/Corporate Debtor

Order delivered on: 24th August 2023

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

Present:

For the Petitioners : Ms. Usha D.N., Adv.
For the Respondent : None

ORDER

Per: Manoj Kumar Dubey, Member (Technical)

1. The present Petition has been filed on 01.06.2022 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 by **Apartment Buyer's Consumer Association** (hereinafter referred to as 'Petitioners / Financial Creditors') with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) in respect of **M/s. Dreamz Infra India Limited** (hereinafter referred to as 'Respondent / Corporate Debtor') for the project Dreamz Samhita.

2. The Respondent Company / the Corporate Debtor, was incorporated on 16.01.2012 with CIN No.U70109KA2012PLC062065 with its registered office situated at #577/B, 2nd Floor, Outer Ring Road, Teachers Colony, Koramangala, Bengaluru-560034.Hence, the jurisdiction lies with this Adjudicating Authority. Its Authorised Share Capital is Rs.10,00,00,000/- (Rupees TenCrores Only) and Paid-up Share Capital is Rs.2,00,00,000/- (Rupees Two Crores only).
3. Brief facts of the Petition are given hereunder:
 - i.) The present Petition is being filed on behalf of allottees/homebuyers who have booked flats in Dreamz Samhita Project through their registered Association Apartment Buyer's Consumer Association (hereinafter as 'Association / Applicant') which represents the allottees / homebuyers of the Dreamz Samhita Project of the Corporate Debtor Company.The members of the Applicant are allottees as defined under RERA Act and adopted and explained u/s 5(8)(f) of the Code. The Applicant is a Registered Society representing the welfare and best interests of the allottees of the Dreamz Samhita Project. The Members of the Applicant-Association have booked the flat by paying their life savings and have made various payments for completion of their flats in Dreamz Samhita Project.
 - ii.) It is stated that Corporate Debtor floated a housing project by the name '**Dreamz Samhita**'in the property at Survey No. 102 admeasuring 9801 sq ft, property bearing no 29 carved out Survey No.102 admeasuring 6725 sq ft and property bearing CMC no. 28 admeasuring 7078 sq ft situated in Kothanur Village (presently known as Puttanahalli

Village).Uttarahalli, Hobli,Bangalore South,Bangalore Urban District. Further, the said Project comprises of a block of 72 flats and that the construction work of ground and first floor (tentatively 20% of the construction work) of the said project has been completed.

- iii.) The construction work was carried out with good pace and after the month of November, 2016 turbulence started taking place at the Project and the officers of the Corporate Debtor started vanishing from the officer and all efforts to reach out to the Managing Director went in vain. Various complaints were filed with the Police and cases were filed before the Civil Courts, Consumer Courts and PIL in the Hon'ble High Court of Karnataka by many home buyers and others. A substantial percentage of the allottees of the Dreamz Samhita Project, upon reading about the insolvency proceedings initiated against the Corporate Debtor in CP (IB) No.84/BB/2019 dated 20.08.2019; also filed their claim Forms with the RP and the same were admitted.
- iv.) The Hon'ble Tribunal in common order dated 04.09.2020 in various IA Nos. 205-208, 213-218, 304-307, 309-311 of 2020 held that the CIRP initiated in above CP is confined to Dreamz Sumadhur Project and thereby directed to complete the CIRP in respect of Corporate Debtor with respect to the Dreamz Sumadhur Project only. The said order put the interests of the members of the Association at risk of losing their life time savings.
- v.) The Dreamz Samhita Project is a viable Project which has a clear Land title. It is also stated that the Dreamz Samhita Project, with the existing building plan, accommodates 72 apartments and thereby its completion would ensure that at least 72 out of the total 2300+ homebuyers of the Corporate Debtor would get the possession of their apartments.
- vi.) The Project in which members of the Applicant have booked / purchased are inclined to get their flats and are ready are willing to complete the project on their own in case there is deficit. Hence, it is requested that

their respective flats, should be registered in their names and also peaceful possession of their flats must be handed over to them.

- vii.) The Allottees of the Dreamz Samhita Project who hold valid allotment letter, Agreement and Memorandum of Understanding in their favour are also willing and ready to complete the remaining work of project and expressed their willingness to pay the remaining amount, if any, towards the completion of the Project.
 - viii.) In line with the spirit of the Code, it is requested that the instant CP may be admitted and IRP be appointed. The Homebuyers of the said Project have further expressed their willingness to take complete control of the Project and ensure its completion. The Applicant Association is determined and well equipped to take control of the assets and complete the construction of the said Project and ensure the allotment of Apartments to the respective allottees. Since the object of the Code gives prominence to resolution over liquidation, the present Petition be admitted and CIRP be initiated in the same matter as in the Dreamz Sumadhur Project case of CP (IB) No.84//BB/2019. Hence, the Application.
- 4.** In support of its submissions, the Petitioners *inter alia* filed the following documents, in respect of all the persons making this Application u/s 7 of the Code:
- i.) Copy of the Registered Association
 - ii.) Photographs depicting the status of the construction work
 - iii.) Authorization letter
 - iv.) Copy of the booking forms, allotment letters, receipts, bank statements, cheques deposited, MOU and Agreement of Sale of all the 16 Financial Creditors
- 5.** The Petitioner has subsequently filed memo vide diary no 1252 dated 03.03.2023 by *inter alia* stating as under:

- I. It is submitted that there are a total of 141 members who have booked their flats in this Project. The number of bookings is twice that of the sanctioned number of flats.
- II. It is stated that as stipulated under the Code, in order to meet the 10% criteria, 16 members/homebuyers have filed this application and the total amount of debt aggregates to Rs.2,42,91,634/-. The details of the applicants/Financial Creditors ,along with execution date & delivery is given as under:-

<i>Sr.No</i>	<i>Name of the Party</i>	<i>Execution date</i>	<i>End Date</i>	<i>Pg.No. of the agreement in the petition</i>	<i>Flat No.and Pg No. in which its mentioned.</i>
1	<i>Srinivas K N</i>	<i>2.09.2013</i>	<i>September 2014</i>	<i>165</i>	<i>Flat No-205 Pg.No.135</i>
2	<i>S L Sreedhara Murthy</i>	<i>02.06.2013</i>	<i>September 2014</i>	<i>199</i>	<i>Flat No-104 Pg No.192</i>
3	<i>R Nagapadmavathi</i>	<i>26.03.2013</i>	<i>August 2014</i>	<i>242</i>	<i>Flat No.204 Pg.No.232</i>
4	<i>Sajjan Raj Gadiya</i>	<i>12.03.2016</i>	<i>September 2017</i>	<i>257</i>	<i>Flat No-402 Pg No.266</i>
5	<i>Kalpna J Vyas</i>	<i>13.08.2016</i>	<i>12.07.2018</i>	<i>282</i>	<i>Flat No-403 Pg No 271</i>
6	<i>Vasu R S</i>	<i>26.11.2013</i>	<i>September 2015</i>	<i>306</i>	<i>Flat No 113 Pg No 314</i>
7	<i>Geetha Rao</i>	<i>30.05.2013</i>	<i>September 2014</i>	<i>349</i>	<i>Flat No 118 Pg No 343</i>
8	<i>Shailaja S</i>	<i>28.12.2014</i>	<i>27.11.2016</i>	<i>372</i>	<i>Flat No.10 Pg No.362</i>
9	<i>Chalapathy R</i>	<i>28.04.2015</i>	<i>September 2016</i>	<i>389</i>	<i>Flat No.215 Pg No.398</i>
10	<i>Ishwar M Hedge</i>	<i>08.06.2013</i>	<i>September 2014</i>	<i>409</i>	<i>Flat No 317 Pg No.416</i>
11	<i>Vakeel Rahman</i>	<i>31.08.2016</i>	<i>30.07.2018</i>	<i>424</i>	<i>Flat No.501</i>

					<i>pg No.419</i>
12	<i>Mytheryi Gopal Thirumalai</i>	<i>11.10.2014</i>	<i>10.09.2016</i>	<i>447</i>	<i>Flat No. pg No.</i>
13	<i>Chowdadas K C</i>	<i>07.10.2014</i>	<i>06.09.2016</i>	<i>465</i>	<i>Flat No. Pg.No.</i>
14	<i>Shyam Sundar</i>	<i>20.03.2015</i>	<i>September 2016</i>	<i>491</i>	<i>Flat No.305 Pg No.477</i>
15	<i>V.B Ramakrishna Gorty</i>	<i>21.04.2015</i>	<i>September 2016</i>	<i>520</i>	<i>Flat No 518 Pg No 509</i>
16	<i>Murugesan R</i>	<i>04.02.2013</i>	<i>03.01.2015</i>	<i>548</i>	<i>Flat No 01 Pg No.556</i>

III. The construction of the Project was carried out and tentatively 20% of the Project was completed. Further, that there has been no consistency with respect to the documents issued or agreements executed from the Corporate Debtor side. The Corporate Debtor has not executed MoU, Sale or Construction Agreement as stated by them to the homebuyers though they had made the payments on time. Only some of the homebuyers do hold either a MoU or Sale or Construction or some of the Agreements.

IV. It is submitted that a Section 7 application was filed against the same Corporate Debtor for initiation of CIRP with respect to a specific and different Project i.e., Dreamz Sneh in CP IB 83 OF 2021, the same was admitted by this Tribunal on 15.02.2023.

6. On 29.05.2023, this Tribunal directed the Petitioner to a file a clarificatory memo regarding the filing of the application by the “Apartment Buyers Association” on behalf of the homebuyers. In compliance to the same, the Petitioner has filed another memo vide diary no 3055 dated 09.06.2023 by *inter alia* stating as under:

i.) The Applicant is a registered association consisting of 141 members who are all the aggrieved homebuyers of Dreamz Samhita Project ,one amongst the other projects launched by the Corporate Debtor.This

association has been formed for convenience to monitor all the cases, petitions or applications filed in various forum

- ii.) Through a board resolution passed on 29.05.2022 by the members of the association, Mr.Sreedhara Murthy and Mr.Ramakrishna Gorty has been appointed as the authorized signatory on behalf of the association, same has been attached to the main petition.Further to this board resolution passed, all the members have signed approving the said appointment.
 - iii.) It is seen that a total of 105 of 141 members were present in the annual general meeting and rest 36 members were unable to attend the said meeting as they are ones who are residing abroad. It is to be noted that yet the absence of these 36 members, the resolution has been passed with a 100% vote.
 - iv.) It is submitted that these 16 members/homebuyers are the members of the association as well and that through board resolution passed, they have appointed Mr,Sreedhara Murthy and Mr. Ramakrishna Gorty as the authorized signatories. Also, a separate authorization appointing the same persons as authorized signatories is passed. Hence, it is stated that the name of the association i.e., Apartment Buyer's Consumer Association is made a party and is mentioned in the Memo of Parties.
- 7.** Ms Usha D.N, learned Counsel for the Financial Creditor attended, whereas none appeared for the Corporate Debtor. We have carefully perused the materials available on record and the extant provisions of the Code and the Rules made there under.
- 8.** Notice for admission was issued on 8.07.2022.However, on 29.09.2022, this Tribunal noticed that, the proof of service filed along with news paper publication by the Petitioner vide Diary No.3828 dated 09.09.2022 with tracking report showed an endorsement 'item returned addressee left without instructions'. After that several opportunities were granted viz. 13.09.2022, ,29.09.2022,11.11.2022,8.12.2022,20.12.2022,1.02.2023 & 28.02.2023, but none appeared for the respondent . Therefore, on 28.02.2023 this Tribunal observed that in spite of several opportunities nobody attended on behalf of the

Corporate Debtor nor any objection was filed, accordingly, the matter was decided to be proceeded against the Corporate Debtor on an **Ex-parte** basis.

9. In the present case, as per the documents produced by the Petitioners, the subject Project i.e., '*Dreamz Samhita Project*' comprises of a block of 72 flats whereas the instant application is being filed by a total of 16 allottees which far exceeds the 10% of the total allottees in the Project and accordingly have satisfied the threshold limit condition. The total list of 16 members including the Principal amounts claimed by them amounting to Rs.2,42,91,634 /- is given in Part-IV of Form-1.
10. The other issue to be examined is whether the C.P. is within the period of limitation. As per the documents the project has to be completed and the flats are required to be delivered during the period between May 2014 - July 2018 in respect of various Homebuyers. The Corporate Debtor was unable to complete the Project in time. However, even when one of the homebuyers fulfils the limitation it is sufficient. The Hon'ble Supreme Court in *Manish Kumar vs. Union of India, (2021) 5 SCC 1*, has observed that the homebuyers under Section 7 application only need to show the default qua one of the Financial Creditors in as much to maintain the limitation. Further, in this case the cause of action arises due to earlier orders dated 20.08.2019 and 04.09.2020 passed by this Adjudicating Authority in CP (IB) No.84/BB/2019 in respect of same Corporate Debtor. While in the order dated 20.8.2019, CIRP was initiated for the Corporate Debtor as a whole; vide order dated 4.09.2020, this Adjudicating Authority decided that the particular CIRP was confined to Dreamz Sumadhur Project only. This order of this Adjudicating Authority has been upheld by the Hon'ble NCLAT Chennai vide order No TA No.79/2021 (Com.App.(AT) No.851/2020/TR) dated 1.06.2023. Accordingly, in view of the order dated 04.09.2020, there is a continuity of the judicial process, which further extends the Limitation. Since the instant CP is filed on 1.06.2022, the same is filed within the period of limitation.
11. The remaining issue to be examined is whether the debt and default thereof are proved. The various documents filed along with the C.P. confirm the debt. The

Memorandum of Understanding, Construction Agreements along with the Agreement of Sale on various dates executed between the Parties herein coupled with the receipts issued by the Corporate Debtor confirms the various payments made by the Petitioners. The aggregate amount claimed to be in default as per Part-IV of Form-1 itself is Rs.2,42,91,634 /-(Two Crores Forty-Two Lakhs Ninety-One Thousand Six Hundred and Thirty-Four Only) i.e., more than the threshold limit of Rs.1 Crore.

12. It is pertinent to refer here the judgement 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 and will not affect other projects undertaken by it.
13. 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. “Moreover, three –Member Bench of the NCLAT, Principal Bench, New Delhi in the matter of ‘Majestic Towers Flat Owners Association & Anr.’ V. Housing Development and Infrastructure Ltd & Ors.’, has held that Project Wise Insolvency can be granted to bring about better Resolution and prevent Liquidation as the sufferers would be the Homebuyers.....”
14. We have carefully considered the arguments of the respective Counsel. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the financial debt and for the default amount being above Rs.1,00,00,000/- (Rupees One Crore Only), the **Petition** is **admitted** in respect of “**Dreamz Samhita**” Project of Respondent-**Dreamz Infra India Limited** under Section 7 of the I&B Code,

2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence 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 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) 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;
 - (f) The provisions of sub-section (1) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority, and to a surety in a contract of guarantee to a Corporate Debtor;
 - (g) 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 passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.
- 15.** The Petitioners have proposed the name of Mrs. Ramanathan Bhuvaneshwari, a qualified insolvency professional having Registration No. IBBI/IPA-002/IP-N00306/2017-18/10864 as the Interim Resolution Professional (IRP) in respect

of the Corporate Debtor. Written Consent given by the IRP in Form 2 dated 28.02.2023 has been filed along with the I.A No.175/2023 at Page Nos.13-15, wherein it was declared she is eligible to be appointed as IRP in the case of the Corporate Debtor and that no disciplinary proceedings are pending against her with the Board or ICSI Institute of Insolvency Professionals. However, since the Certificate of Registration is not filed, the IRP shall file the same within one week from the receipt of this order.

- 16.** The Law Research Associate of this Adjudicating Authority has checked the credentials of Mrs.Ramanathan Bhuvaneshwari, and there is nothing adverse against her. In view of the above, the Bench appoints Mrs.Ramanathan Bhuvaneshwari, bearing Registration No.IBBI/IPA-002/IP-N00306/2017-2018/10864 and registered address at C-006,Pioneer Paradise,24th Main Road, 7th Phase,JP Nagar ,Bengalore-560078, Mobile No.: 9945527606 , Email: bhoona.bhuvan @ gmail.com the Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
- 17.** The Financial Creditors 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 the 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 Adjudicating Authority 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 Adjudicating Authority every fortnight.

19. A copy of the order shall be communicated to both the Parties. The learned Counsel for the Petitioners shall deliver a copy of this Order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this Order to the Interim Resolution Professional at her e-mail address forthwith.

-Sd-

**MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)**

-Sd-

**T. KRISHNAVALLI
MEMBER (JUDICIAL)**