

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL
BENCH, NEW DELHI**

Contempt Case (AT) No. 18 of 2024

In

Company Appeal (AT) (Insolvency) No.34 OF 2020

IN THE MATTER OF:

Ashok Kriplani

...Applicant

Versus

T. Krishna Valli & Anr.

...Respondents

Present:

For Appellant : Mr. Ashok Kriplani, Party in person

For Respondents :

J U D G M E N T

ASHOK BHUSHAN, J.

This Contempt Application has been filed by Ex-Resolution Professional of Corporate Debtor – Dreamz Infra India Ltd. Praying for initiation contempt proceedings for violation of order dated 13.01.2021 of this Tribunal passed in Company Appeal (AT) (Ins.) No.34 of 2020 against both the Members of Adjudicating Authority, i.e. Respondent No.1 – Ms. T Krishna Valli, Member (Judicial), NCLT, Kochi Bench and Shri Manoj Kumar Dubey, Member (Technical), NCLT Bengaluru Bench.

2. Brief facts of the case necessary to be noticed for deciding this Contempt Application are as follows:

- (i) Corporate Insolvency Resolution Process (“CIRP”) of Dreamz Infra India Ltd. in CP(IB)84/2019 commenced vide order dated 20.08.2019 passed by Adjudicating Authority Bengaluru Bench in which the Applicant was appointed as Interim Resolution Professional.
- (ii) On 09.11.2019, Committee of Creditors (“**CoC**”) passed a resolution replacing the Applicant and appointing one Mr. Konduru Prasanth Raju (“K.P. Raju”), as RP. The Adjudicating Authority vide order dated 17.12.2019 did not approve the resolution of CoC and offered the Applicant to work as RP at the fixed rate of Rs.6.75 lakhs per month.
- (iii) Order dated 17.12.2019 was challenged by CoC before this Tribunal in Company Appeal (AT) (Ins.) No.34 of 2020, which Company Appeal was decided on 13.01.2021, setting aside the order dated 17.12.2019 passed by Adjudicating Authority appointing Applicant as RP. This Appellate Tribunal while setting aside order dated 17.12.2019 directed that fees paid/ payable in terms of impugned orders, shall be protected. In pursuance of the order of this Appellate Tribunal dated 13.01.2021, the Applicant handed over charge of the RP to K.P. Raju.
- (iv) The Corporate Debtor was having several Projects, various Applications came for consideration in the CP(IB)84/2019. The Adjudicating Authority vide order dated 04.09.2020 confined

the CP(IB)84/2019 to only one Project of the CD - Dreamz Sumadhur Project.

- (v) A Section 7 Application was filed by Dreamz Sneh Project Allottees Welfare Association being CP(IB)No.83/BB/2021 against the CD with respect to Dreamz Sneh Project, on which Application, the Adjudicating Authority vide order dated 15.02.2023 admitted Section 7 Application with respect to Dreamz Sneh Project. The Applicant filed an IA No.168 of 2022 in CP(IB)No.83/BB/2021. i.e. with respect to Dreamz Sneh Project, to implead the Applicant and decide upon unpaid CIRP cost of the Applicant. IA No.168 of 2022 filed by the Applicant was dismissed by the Adjudicating Authority vide order dated 07.10.2022. The Adjudicating Authority held that Applicant has no *locus standi* to file the IA No.168 of 2022 in CP(IB)No.83/BB/2021 and he has to make his claim of unpaid CIRP costs in CP(IB) No.84/BB/2019. The Applicant challenged the order dated 07.10.2022 by filing an Appeal before this Appellate Tribunal being Company Appeal (AT) (CH) (Ins.) No.122 of 2023, which Appeal came to be dismissed by an order dated 04.07.2023 passed by NCLAT Chennai Bench. This Tribunal held that Applicant having appointed IRP/ RP in CP(IB) No.84/BB/2019 with respect to another project (Dreamz Sumadhur Project), the Applicant cannot seek any unpaid fee/ costs from the Members of the CoC of another Project of the CD.

The order passed by the Adjudicating Authority dated 07.10.2022 was affirmed. The Applicant aggrieved by the order of this Tribunal dated 04.07.2023, filed Civil Appeal (Diary No. 33778 of 2023), before the Hon'ble Supreme Court, which Appeal also came to be dismissed on 12.12.2023.

- (vi) With respect to another Project of the CD, namely Samhita Project, a Section 7 Application being CP(IB)No.113/BB/2022 was filed by Apartment Buyers Consumer Association, in which the Applicant filed an IA No.502 of 2022 to implead the Applicant and decide upon the unpaid CIRP costs of the Applicant. The said Application was heard by the Adjudicating Authority and dismissed vide order dated 08.12.2022 holding that Applicant has no *locus standi* to file IA No.502 of 2022 in CP(IB)No.113/BB/2022. It was held that the Applicant has to make his claim of CIRP costs in CP(IB)No.84 of 2019.
- (vii) On 24.08.2023, Section 7 Application CP(IB)No.113/BB/2022 was admitted by the Adjudicating Authority Bengaluru Bench. The Applicant filed this Contempt Application for taking action under the Contempt of Courts Act, 1971 against the Respondents for violation of order of this Tribunal dated 13.01.2021 in Company Appeal (AT) (Ins.) No.34 of 2020 in passing order dated 24.08.2023.

2. Shri Ashok Kriplani, the Applicant has appeared in person in support of the Contempt Application. When the Contempt Application came for

consideration on 25.11.2024, this Tribunal granted time to the Applicant to file an affidavit explaining the question of limitation for filing a Contempt Application for violation of order dated 13.01.2021. In pursuance of the order of this Tribunal dated 25.11.2024, the Applicant filed affidavit dated 09.12.2024.

3. We have heard the Applicant appearing in person.

4. The Applicant explaining the limitation under Section 20 of the Limitation Act, 1971 submits that order dated 24.08.2023 has been passed by the Adjudicating Authority and within one year from the said order, the present Contempt Application was filed on 16.06.2024, thus, the Contempt Application is not hit by Section 20 of the Limitation Act and needs to be heard on merits. It was further contended that Applicant has continuous cause of action and the Contempt Application is well within time and not barred by Section 20 of the Contempt of Courts Act, 1971. The order dated 24.08.2023 is an order passed by Adjudicating Authority Bengaluru Bench in Section 7 Application filed by Apartment Buyers Consumer Association praying initiation of CIRP against Dreamz Infra India Ltd. of the CD with respect to Samhitha Project. The said Application has been admitted on 24.08.2023 by Adjudicating Authority, which order has been filed as Annexure A1 to the Contempt Application.

5. The present Contempt Application has been filed on 16.06.2024, i.e. within a period of one year, we are of the view that Contempt Application, which alleges violation of order dated 13.01.2021 by the order of Adjudicating Authority dated 24.08.2023 needs to be heard on merits, it

having been filed within one year from passing of the order dated 24.08.2023. We, thus, proceed to consider the Contempt Application filed by the Applicant on merits.

6. It is, however, relevant to notice that in the Contempt Application the Applicant has referred to various other orders including the order dated 07.10.2022, rejecting IA No.168 of 2022; order initiating the CIRP against another project namely – Sneh Project; another order dated 27.06.2023 has been referred to, which was passed by Adjudicating Authority, Bengaluru Bench, in which direction was issued by Adjudicating Authority to file written submissions within two weeks. In paragraphs 23 to 25 of the Contempt Application, the Applicant has pleaded about dates when cause of action arose for filing the Contempt Application. As observed above, the present Contempt Application has been filed within a period of one year from passing of the order dated 24.08.2023, the Contempt Application cannot be said to be barred by Section 20 of the Contempt of Courts Act, 1971. We, thus, proceed to examine the arguments made in the Contempt Application and submissions advanced by Applicant on merits.

7. The Applicant appearing in person has pressed the Contempt Application on the ground that this Tribunal vide its order dated 13.01.2021 while setting aside order appointing the Applicant as RP has directed the payment of fees and costs to the Applicant and the CP(IB)84/BB/2019, which was filed against the CD was initiated with regard to combined Projects and the Applicant was entitled for his fees, which was protected by order dated 13.01.2021 for all the Projects of the

CD. Since, the assets of the Sumadhur Project, to which CP(IB) No.84/BB/2019 has been confined by order dated 04.9.2020, are only Rs.55 lakhs, whereas CIRP cost to which the Applicant is entitled is Rs.2.15 crores. Hence, the Applicant has rightly filed Application with respect to other Projects, i.e. Sneh Project and Samhita Project for deciding upon the CIRP cost of the Applicant, which Application was wrongly rejected by the Adjudicating Authority. It is submitted that the Adjudicating Authority while passing the order dated 24.08.2023 for initiating CIRP with regard to Project Samhita of the CD, has violated the order dated 13.01.2021. Hence, both the Members of the Adjudicating Authority, who are Respondent Nos.1 and 2 need to be proceeded under the Contempt of Courts Act, 1971. The Applicant submits that the present RP, who is appearing in CP(IB) No. 84 of 2019 is misconducting himself and not taking steps to pay the CIRP costs to the Applicant. Various fraudulent activities are being undertaken by present RP - Shri K.P. Raju. The Applicant submits that order dated 24.08.2023, by which the CIRP has been initiated against another Project of CD, i.e. Samhita Project is in violation of order dated 13.01.2021. Hence, both the Members of the Adjudicating Authority be proceeded under the Contempt of Courts Act.

8. From the aforesaid facts, as has been brought out in the Contempt Application, following facts need to be noted:

- i. The CIRP against the CD – Dreamz infra India Ltd. commenced vide order dated 20.08.2019, in which Applicant was appointed as an IRP.

- ii. On 09.11.2019, the CoC decided to replace the Applicant with K.P. Raju as RP, which resolution was not approved by the Adjudicating Authority on 17.12.2019, by which order dated 17.12.2019, the Applicant was offered to work as RP at the fee of Rs.6.75 lakhs per month by the Adjudicating Authority.
- iii. Company Appeal (AT) (Ins.) No.34 of 2020 was filed by the CoC, against the order dated 17.12.2019, which came to be allowed on 13.01.2021 by this Tribunal. A copy of the order dated 13.01.2021 has been brought on the record as Annexure A6 by the Applicant. This Tribunal vide order dated 13.01.2021 has set aside the order dated 17.12.2019. However, while setting aside the order, following directions were issued in paragraph 12, which are as follows:

“(A) Mr. Hari T. Devadiga will be treated as the Authorized Representative of class of Financial Creditors (home or shop buyers) of Dreamz Infra India Ltd. under Section 21(6-A)(b) of IBC. Charge, if any, required to be handed over by Respondent No.2 shall be handed over to Mr. Hari T. Devadiga.

(B) The Adjudicating Authority shall in compliance of Section 22(4) forward the name of Mr. Konduru Prasanth Raju to the IBBI and follow the procedure as laid down in Section 22(4) and (5) of IBC.

(C) In the meanwhile, the charge of IRP will remain with the Respondent No.1 - Ashok Kriplani who will be treated as IRP till the Adjudicating Authority does compliance of Section 22(4) and (5) of IBC.

(D) Legality of the actions taken by the Respondents 1 and 2 in the period between passing of the Impugned Orders dated 17th December, 2019 till now, shall not be called into question on the basis of present Orders which we are passing. The steps taken by them pursuant to Impugned Orders shall be treated as acts done in regular course. The steps taken by them in CIRP and fees paid/payable in terms of Impugned Orders, shall be protected.”

9. The Applicant relies on directions issued in paragraph 12(D), which directed that *“The steps taken by them in CIRP and fees paid/ payable in terms of Impugned Orders, shall be protected”*. The grievance which has been raised in the Contempt Application and by various Applications filed by the Applicant in the CIRP of the CD with respect to other two Projects namely – Sneh Project and Samhita Project, is only with respect to CIRP costs to which the Applicant was entitled and the present Contempt Application has also been filed for the purpose of CIRP costs, which according to the Applicant he was entitled as per order dated 13.01.2021.

10. The Applicant has brought on the record order dated 04.09.2020 passed by Adjudicating Authority in CP(IB) 84/BB/2019, which directed the CIRP be deemed to be in respect of only Sumadhur Project. Various Applications filed by the Applicant, Members of the CoC and various Homebuyers, came to be decided by common order dated 04.09.2020. The Adjudicating Authority in paragraphs 28 and 29 of the order dated 04.09.2020 directed as follows:

“28. For the aforesaid reasons and circumstance of the case and the Law on the issue, we are of considered opinion that the Applicant has exceeded his jurisdiction and interpreted the CIRP in question,

so as to suit him rather than to achieve object of Code, in terms of the order dated 20th August, 2019 passed in CP (IB) No.84/BB/2019, and thus initiated several actions and filed the instant Applications, which are not at all maintainable. Therefore, in the interest of justice and equity, the CIRP initiated by the Adjudicating Authority, vide its order dated 20.08.2019 should be interpreted and read in relation to the project **Dreamz Sumadhur** only and not in respect of all the projects of the Corporate Debtor, so that CIRP in question initiated by the Adjudicating Authority, would be concluded in terms of extant provisions of Code and the Rules thereunder. We are also supported in this regard by the judgement of the Hon'ble NCLAT in Flat Buyers v/s Umang Realtech Private Limited, as cited supra.

29. In the result, the following orders are passed:

- 1) **LA Nos. 205, 206, 207, 208, 213, 214, 215, 216, 217, 218, 304, 305, 306, 307, 309, 310 & 311 of 2020** in CP (IB) No. 84/BB/2019 are hereby dismissed as not maintainable.
- 2) The CIRP initiated vide order dated 20.08.2019 passed in CP (IB) No. 84/BB/2019 by the Adjudicating Authority is deemed to be in respect of only **Dreamz Sumadhur project**.
- 3) Accordingly, the Applicant is directed to take appropriate action in accordance with extant provisions of Code and the Rules made thereunder and complete CIRP in respect of Corporate Debtor with reference to Dreamz Sumadhur project.”

11. Consequence of the order dated 04.09.2020 is that CP(IB)No. 84/BB/2019, in which Applicant was appointed as RP was confined to only one Project, i.e. Dreamz Sumadhur Project only. We have noted above that after the order dated 04.09.2020, a Section 7 Application was filed by Dreamz Sneh Project Allottees Welfare Association being CP(IB) 83/BB/2019 raising the grievance that CP(IB) No.84/BB/2019 having

been confined to only one Project, i.e. Dreamz Sumadhur Project, their claims, which were initially filed in the said CIRP, cannot be considered, hence, another Section 7 proceeding be initiated against the CD. In CP(IB)No.83/BB/2021 an order was passed on 15.02.2023 by Adjudicating Authority, by which Section 7 Application was admitted against the CD with respect to Sneh Project. Order dated 15.02.2023 is filed as Annexure A14, where Adjudicating Authority after noticing the submission of the parties, admitted the petition with respect to Project Dreamz Sneh Project. It is useful to extract paragraphs 14 to 17 of the order, which are as follows:

“14. 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.

15. 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.

16. We have carefully considered the arguments of the respective Counsels. 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 Sneh**" 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 ow 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.

17. The Petitioners have proposed the name of Mrs. Jaya Bharuka, a qualified insolvency professional having Registration No. IBBI/IPA-002/IP-N00781/2018-2019/12432 as the Interim Resolution Professional (IRP) in respect of the Corporate Debtor. Written Consent given by the IRP in Form 2 dated 08.09.2021 has been filed along with the C.P at Page Nos.1516-1520, 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.

12. Thus, CP(IB) No.83/BB/2021 was admitted with respect to Sneh Project, in which CIRP, the Applicant filed an IA No.168 of 2022 praying for impleadment and seeking a direction to decide upon unpaid CIRP costs of the Applicant. Application – IA No.168 of 2022 filed by the Applicant was rejected on 07.10.2022, the copy of which order is filed as Annexure A9. It is useful to extract paragraph 3 of the order, which is as follows:

“3. When the matter is taken up for hearing, it is observed that the Applicant/Erstwhile RP was appointed as the IRP/RP in C.P. (IB)No.84/BB/2019 against the same Corporate Debtor herein for another project, and through this Application, he is seeking to get his unpaid CIRP costs from the Members of the COC of the Corporate Debtor in this C.P. However, he has no Locus Standi to file the present I.A. in this C.P., and he has to make his claim in C.P. (IB)No.84/BB/2019. In view of the above facts and circumstances of the case, the instant I.A. is hereby dismissed as not maintainable.”

13. Against the order dated 07.10.2022, the Applicant filed a Company Appeal (AT) (CH) (Ins.) No.122/2023, which came to be dismissed by this

Appellate Tribunal, Chennai Bench vide order dated 04.07.2023. The Appellate Tribunal while dismissing the Appeal, noticed the following facts of the case in paragraphs 5, 6 and 7, which are as follows:

“5. It is seen from the record that CIRP was initiated against the Corporate Debtor namely Dreamz Infra India Ltd. vide order dated 20.08.2019 and the Appellant herein was appointed as IRP. Subsequently vide order dated 17.12.2019 the Appellant was appointed as RP. It is the case of the Appellant that vide order dated 04.09.2020 the Adjudicating Authority has directed the CIRP to be conducted on a ‘Project Wise Basis’ and therefore the Appellant was constrained to file I.A. No.168 of 2022 seeking direction from the Adjudicating Authority for deciding first the unpaid CIRP cost to be paid to the Appellant before admitting the case of the second Respondent which is C.P.(IB) No. 83/BB/2021.

6. It is an admitted fact that the Appellant was appointed as an RP in C.P.(IB) No.83/BB/2021 and had already been removed from the capacity of RP on 08.03.2021 and was replaced by Mr. Konduru Prasanth Raju. Hence, as the situation stands today the Appellant is neither the RP in C.P.(IB) No.84/BB/2019 nor is he connected with C.P.(IB) No.83/BB/2021.

7. Having regard to the fact that the Appellant herein was appointed as Interim Resolution Professional/Resolution Professional in C.P.(IB)No.84/BB/2019, in another Project, viewed from any angle, the Appellant cannot seek any unpaid Fees/Costs from the ‘Members of the Committee of Creditors’ of another project of the ‘Corporate Debtor’. This Tribunal, is of the considered view that the ‘Appellant’ has no ‘Locus standi’ to make his claim in C.P.(IB) No.83/BB/2021 and therefore this ‘Tribunal’ does not find any substantial ground(s) to interfere with the well-considered order of the ‘Adjudicating Authority’ in I.A. No.168 of 2022 in C.P. (IB)

No.83/BB/2021. Needless to add, the Appellant is at liberty to pursue his remedy, if so advised, in accordance with law. No costs. Pending IAs are closed.”

14. It is useful to notice that challenging the order dated 04.07.2023, the Applicant filed Civil Appeal (Diary No.33778/2023), which Appeal was dismissed by the Hon’ble Supreme Court vide order dated 12.12.2023. The order passed by the Hon’ble Supreme Court on 12.12.2023 is as follows:

“IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. _____ of 2023
(Arising out of Diary No.33778 of 2023

ASHOK KRIPLANI

...APPELLANT(S)

VERSUS

RAMANATHAN BHUVANESHWARI & ANR.

....RESPONDENT(S)

ORDER

Delay condoned.

We do not find any good ground and reason to interfere with the impugned judgment/order and hence, the present appeal is dismissed.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(S.V.N. BHATTI)

NEW DELHI
December 12, 2023.”

15. Now we come to the order dated 24.08.2023, which is the main basis of alleging contempt by the Applicant and it is contended that the said order is in violation of order dated 13.01.2021, hence, the contempt proceedings be initiated against both the Members of the Adjudicating Authority.

16. The copy of the order dated 24.08.2023 has been filed as Annexure A1 by the Applicant, which is in CP(IB) No.113/BB/2022. Paragraph 1 of the order notices that Section 7 Application has been filed for Project Dreamz Samhita. Paragraph 1 of the order is as follows:

“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.”

17. The Adjudicating Authority after noticing the facts and details of the Applicant, who were 16 in number and who were Financial Creditors in a class, decided to admit the Application for the Project Dreamz Samhita. In paragraphs 12, 13, and 14 of the order, following has been noticed:

“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.”

18. The order dated 24.08.2023, passed by Adjudicating Authority under Section 7 of the IBC admitting Section 7 Application filed by Apartment Buyer’s Consumer Association, details of the Applicants/ Financial Creditors have been given in paragraph 5 (II), which were 16 in number and Adjudicating Authority came to the finding that default was committed, which are contained in paragraph 11.

19. The Applicant is alleging violation of the order dated 13.01.2021 by the Adjudicating Authority while admitting Section 7 Application and alleging that contempt has been committed by Adjudicating Authority in admitting Section 7 Application. The Contempt of Courts Act, 1971 defines civil contempt in Section 2, sub-clause (b), which is as follows:

“**2(b)** “civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court;”

20. Section 12 provides for punishment for contempt of court. The allegation in the Contempt Application are that civil contempt has been committed by the Respondents while admitting Section 7 Application vide order dated 24.08.2023, which is in violation of order dated 13.01.2021. The civil contempt as defined in Section 2(b), came for consideration before the Hon’ble Supreme Court in large number of cases. We may refer to judgment of the Hon’ble Supreme Court in **(2014) 14 SCC 446 – T.C. Gupta vs. Bimal Kumar Dutta and Ors.** where the Hon’ble Supreme Court in paragraph 10 laid down following:

“10.A contempt action being in the nature of quasi-criminal proceeding the degree of satisfaction that must be reached by the court to hold a person guilty of commission of contempt would be akin to what is required to prove a criminal charge, namely, proof beyond reasonable doubt. The order of the court in respect of which violation is alleged must, therefore, be clear, unambiguous and unequivocal and defiance thereof must be apparent on the very face of the action with which a contemnor is charged...”

21. Another judgment, which needs to be noticed is **(2014) 7 SCC 416 – Bihar State Government Secondary School Teachers Association vs. Ashok Kumar Sinha and Ors.**, where the Hon’ble Supreme Court had occasion to consider nature and scope of contempt proceedings. The Hon’ble Supreme Court held that approach of Court has to be cautionary approach and it was further held that if there is wilful and contumacious disobedience of order, the Court should take cognizance. In the above case, the Hon’ble Supreme Court has quoted with approval the earlier judgment of the Hon’ble Supreme Court in **Indian Airports Employees’ Union vs. Ranjan Chatterjee – (1999) 2 SCC 537**, wherein in paragraph 7, the Hon’ble Supreme Court laid down following:

“7. It is well settled that disobedience of orders of the court, in order to amount to “civil contempt” under Section 2(b) of the Contempt of Courts Act, 1971 must be “wilful” and proof of mere disobedience is not sufficient (S.S. Roy v. State of Orissa [AIR 1960 SC 190 : (1960) 1 SCR 806 : (1959) 2 LLJ 666]). Where there is no deliberate flouting of the orders of the court but a mere misinterpretation of the executive instructions, it would not be a case of civil contempt (Ashok Kumar Singh v. State of Bihar [(1992) 1 SCC 152 : 1992 SCC (Cri) 84 : AIR 1992 SC 407]).”

22. The law is well settled that civil contempt under Section 2(b) of the Contempt of Courts Act must be wilful and where there is deliberate flouting of the orders of the Court, the Court may initiate action. When we look into the facts of the present case, the Adjudicating Authority has passed order dated 24.08.2023 on an Application filed by Apartment Buyer’s Consumer Association seeking initiation of CIRP with respect to Project Dreamz Samhita. The Adjudicating Authority after finding debt and

default has admitted Section 7 Application and directed the CIRP to commence with respect to Project Dreamz Samhita.

23. We fail to see how the Adjudicating Authority has committed contempt of order dated 13.01.2021 in passing order dated 24.08.2023. The order dated 24.08.2023 was passed on an Application filed by Financial Creditors in a class. Right of Financial Creditors to initiate Section 7 Application against Corporate Debtor is preserved by the IBC and the Application filed in exercise of statutory right granted to the Homebuyers in a class and admission of Section 7 Application was made on the findings of debt and default. We fail to see any contempt or violation of order dated 13.01.2021 passed by this Tribunal in Company Appeal (AT) (Ins.) No.34 of 2020 by the Adjudicating Authority while passing order dated 24.08.2023. The contention of the Applicant is that Adjudicating Authority while passing the order dated 24.08.2023 has not taken into consideration the CIRP costs to which Applicant was entitled, while conducting the CIRP of the CD, which commenced on 20.08.2019.

24. We have already noticed above that with regard to CIRP of the CD with respect to another Project, i.e. Sneh Project, Section 7 Application was admitted on 15.02.2023, on an Application filed by M/s. Dreamz Sneh Projects Allottees Welfare Association, in which CP(IB)No.83/BB/2021, the Applicant has filed IA No.168 of 2022 praying for impleadment in the said Project and to decide upon the unpaid CIRP costs, on the basis of order dated 13.01.2021, which Application was rejected on 07.10.2022, holding that Applicant has no *locus standi* to file an Application in CP(IB)No.83 of

2021, which order was unsuccessfully challenged before this Tribunal and up to the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the Civil Appeal on 12.12.2023.

25. The CIRP, which has commenced vide order dated 24.08.2023 is with respect to another Project of the CD, i.e. Samhita Project. The view taken by the Adjudicating Authority that Applicant has no *locus standi* to file any Application in CIRP in the Sneh Project has been upheld by this Tribunal and the Hon'ble Supreme Court is fully applicable while considering with respect to Project Samhita also. When CIRP has been admitted with respect to another Project Samhita of the CD, a separate CP(IB)No.113/BB/2022 was registered. We are of the view that while admitting Section 7 Application, the Adjudicating Authority has not committed any contempt.

26. The Adjudicating Authority as well as this Tribunal while passing order dated 07.10.2022 and 04.07.2023 has taken the view that Applicant for its CIRP costs has the remedy in CP(IB)No.84/BB/2019, in which the Applicant was appointed as RP, which decision has been affirmed upto the Hon'ble Supreme Court.

27. In any view of the mater, while admitting Section 7 Application, which was filed by Financial Creditors in a class, no contempt can be said to have been committed by the Adjudicating Authority, who was exercising its statutory jurisdiction under Section 7 of the IBC, while admitting Section 7 Application filed by the Financial Creditors in a class. It has already been held by Adjudicating Authority and affirmed by this Tribunal that Applicant for his unpaid CIRP costs has to approach in CP(IB)No.84/BB/2019 in

which CIRP, the Applicant was appointed as RP by order dated 17.12.2019, which order was subsequently set aside on 13.01.2021 by this Tribunal.

28. We do not approve the act of the Applicant in filing Contempt Application against order of the Adjudicating Authority, which order was passed by Adjudicating Authority in exercise of its statutory jurisdiction on an application admitting Section 7 Application. No contempt can be said to have been committed by Adjudicating Authority while admitting Section 7 Application and the act of the Applicant in filing contempt against Adjudicating Authority is unjustified act, which action has no legs to stand. For his unpaid CIRP costs with reference to his appointment as RP in CP(IB)No.84 of 2019, the Applicant was free to take all steps for realising its unpaid CIRP costs, but he has no authority to initiate contempt action against the Adjudicating Authority while admitting CIRP with respect to another Project of the CD.

29. The Applicant has also placed reliance on two judgments of the Hon'ble Supreme Court being **Civil Appeal Nos.5023-2024 of 2024 in State Bank of India & Ors. vs. The Consortium of Mr. Murari Lal Jalan and Mr. Florian Fritsch & Anr.** decided on 07.11.2024. The above was a case where Hon'ble Supreme Court while deciding an Appeal arising out of order of NCLT Mumbai Bench and NCLAT, has made observations in paragraph 182 and 183, which have been relied by the Appellant. The present is not a case where NCLT has contravened or violated any of the order of the Hon'ble Supreme Court, rather the order of NCLT is in accord with the order of Hon'ble Supreme Court dated 12.12.2023 noted as above.

There can be no two opinions that any violation of the order of the Hon'ble Supreme Court is an act in defiance. In the present case, there being no violation of the order of Hon'ble Supreme Court, the observations made by Hon'ble Supreme Court in paragraphs 182 and 183, do not help the Appellant in the present case.

30. Another judgment relied by the Applicant is ***Contempt Petition (C) No.158-159 of 2024 in Civil Appeal Nos.5542-5543 of 2023 in Celir LLP vs. Mr. Sumati Prasad Bafna & Ors.*** The reliance has been placed in paragraph 198 to 201, which are as follows:

“**198.** When judicial orders are openly flouted or court proceedings are disrespected, it sends a signal that the rule of law is ineffective, leading to a loss of trust in the system. Judicial decisions must remain unimpaired, free from external pressures, manipulation, or circumvention. Acts that attempt to mislead the court, obstruct its functioning or frustrate its decisions distort the process of justice and would amount to contempt

199. The contempt jurisdiction of this court cannot be construed by any formulaic or rigid approach. Merely because there is no prohibitory order or no specific direction issued the same would not mean that the parties cannot be held guilty of contempt. The Contempt jurisdiction of the court extends beyond the mere direct disobedience of explicit orders or prohibitory directions issued by the court. Even in the absence of such specific mandates, the deliberate conduct of parties aimed at frustrating court proceedings or circumventing its eventual decision may amount to contempt. This is because such actions strike at the heart of the judicial process, undermining its authority and obstructing its ability to deliver justice effectively. The authority of courts must be respected not only in the letter of their orders but also in the broader spirit of the proceedings before them.

200. Any contumacious conduct of the parties to bypass or nullify the decision of the court or render it ineffective, or to frustrate the proceedings of the court, or to enure any undue advantage therefrom would amount to contempt. Attempts to sidestep the court's jurisdiction or manipulate the course of litigation through dishonest or obstructive conduct or malign or distort the decision of the courts would inevitably tantamount to contempt sans any prohibitory order or direction to such effect.

201. Thus, the mere conduct of parties aimed at frustrating the court proceedings or circumventing its decisions, even without an explicit prohibitory order, constitutes contempt. Such actions interfere with the administration of justice, undermine the respect and authority of the judiciary, and threaten the rule of law.”

31. The Hon'ble Supreme Court in the above case observed that the contempt jurisdiction of the Court cannot be construed by any formulaic or rigid approach. It was held that contempt jurisdiction of the Court extends beyond the mere direct disobedience of explicit orders or prohibitory directions issued by the Court. It was held that even in the absence of such specific mandates, the deliberate conduct of parties aimed at frustrating court proceedings or circumventing its eventual decision may amount to contempt. There can be no quarrel to the proposition laid down by the Hon'ble Supreme Court in paragraph 198 to 201 as relied by the Applicant. In the present case, the facts and sequence of events and various orders passed have already been noticed above and it is clear that Adjudicating Authority while passing the order dated 24.08.2023 has not disobeyed any directions, nor circumvented any proceedings. The Hon'ble Supreme Court in the above judgment made observation with regard to contumacious conduct of the parties, which observation has no application

in the present case, where the contempt is founded on the order passed by the Adjudicating Authority passed in exercise of its statutory jurisdiction under the IBC. The above judgment of the Hon'ble Supreme Court does not in any manner help the Appellant in the present case.

32. We, thus, do not find that any contempt has been committed by Adjudicating Authority in admitting Section 7 Application by order dated 24.08.2023 with respect to Project Samhita of the CD. In view of the foregoing discussions and conclusions, we do not find any ground to initiate any contempt proceedings against the Adjudicating Authority. The Contempt Application is devoid of any merit and is accordingly dismissed. A copy of this order be forwarded to Adjudicating Authority as well as Insolvency and Bankruptcy Board of India.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

NEW DELHI

6th January, 2025

Ashwani