

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
09-03-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

Company Petition IB/107/2021
U/s 7 of IBC, 2016

IN THE MATTER OF:

Vemuri Ravi Kumar

...Financial Creditor

Vs

Bhriugu Infra Pvt Ltd

...Corporate Debtor

CORAM:-


DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Learned Counsel Dr. Uma Shankar Gollapudi for Financial Creditor and Learned Counsel Mr. Titiksha Jain for Corporate Debtor are present.

Orders in CP(IB) No.323/59/HDB/2021 pronounced vide separate sheets. In the result, this company petition is allowed and corporate debtor is put into Corporate Insolvency Resolution Process(CIRP) as per the terms and conditions of this order. CP(IB)No.323/59/HDB/2021 is allowed accordingly.


MEMBER (T)


MEMBER (J)

Srinivas

**NATIONAL COMPANY LAW TRIBUNAL
BENCH-1, HYDERABAD**

CP (IB) NO. 107/7/HDB/2021

APPLICATION UNDER SECTION 7 OF IBC, 2016, R/W RULE 3 OF I & B (AAA) RULES, 2016

Between

Vemuri Ravi Kumar
#5, Open Skies, Kokapet
Hyderabad – 500075
Telangana State

**... Petitioner/
Financial Creditor**

Versus

Bhrighu Infra Private Limited
Plot No. 1246, Road No. 62
Lane Beside Krishna Jewellers
Jubilee Hills, Hyderabad
Telangana – 500 033

**...Respondent/
Corporate Debtor**

Date of order: 09.03.2022

Coram:

Dr N.Venkata Ramakrishna Badarinath, Hon'ble Member (Judicial)

Shri Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)

Appearance

For Applicant: Dr. Uma Shanker Gollapudi, Advocate

For Respondent: Ms Titiksha Jain, PCS



PER BENCH

O R D E R

1. This Petition is filed by Vemuri Ravi Kumar under Section 7 of Insolvency and Bankruptcy Code (hereinafter to be referred as “Code”), read with Rule 4 of Insolvency and Bankruptcy admission of the petition, seeking initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, contending that the Corporate Debtor defaulted in the payment of alleged debt of Rs 2,27,28,360/- (Rs. Two Crores, Twenty seven lakhs, twenty eight thousand three hundred and sixty only).
2. The averments in brief are: -
 - 2.1 Vemuri Ravi Kumar (herein after referred to as Financial Creditor) is a software engineer and worked in IT Industry.
 - 2.2 Bhriгу Infra Pvt Ltd (herein after referred to as Corporate Debtor) is a Company registered under the Companies Act, 1956 and is in the business of Real Estate & Housing Projects Development.
 - 2.3 It is stated that in the month of August 2016, the Corporate Debtor approached the Financial Creditor with an offer to sell plots in Ramchandrapuram Mandal, Sangareddy District for construction of high end villas through funding from the Financial Creditor. The Financial Creditor was interested in the offer and entered into three agreements of sale dated 27.08.2016, 29.09.2016 in respect of Plot Nos. 30, 31, 32, 33 & 23, 24, 25, 26,27, 28 with the Corporate Debtor.





- 2.4 Post the agreements, the Financial Creditor paid consideration to the tune of Rs. 1.36 crores to the Corporate Debtor, through RTS, Cheques and cash. To substantiate his claim, the bank statements and receipts are annexed to the petition.
- 2.5 It is stated that subsequently, the following chronology of events happened which depicts grave violation of terms and conditions of the agreements by the Corporate Debtor:-
- (1) Mortgage of Plot No. 23, 24, 25, 26, 27 to HMDA without the consent of the petitioner/Financial Creditor.
 - (2) Illegal execution of agreements of sale with the following parties by Corporate Debtor on 01.04.2017
 - a) Plot No. 32 to Mrs S. Padmavathi
 - b) Plot No. 25 to Mr. Addepalli N. Srikanth
 - c) Plot No. 34 to Mr. Ramesh Chandra Vemuri
 - (3) Illegal sale of Plots to the following parties by the Corporate Debtor on 06.05.2017 & 16.04.2018
 - a) Plot No. 30 to Mrs. K. Vineela
 - b) Plot No. 32, 33, 34 to Mr M. Madhusudhan Reddy, Alkepalli Srinivasulu Mukkamala Sri Sai Raghu.
- 2.6 It is further alleged that the mortgaged plots with HMDA were released on 08.01.2019. Though Plot Nos. 25,26, 27,28. 29 (as per the HMDA Plan) admeasuring 1335 sq.yards were registered in favour of Financial Creditor by the Corporate Debtor, the Corporate Debtor however failed to transfer 4 plots admeasuring 1067 sq. yards in favour of the Financial Creditor.



- 2.7 When the Corporate Debtor failed to allot and register the plot, a demand notice in Form-3 was issued to the Corporate Debtor through email and speed post which were duly served on 12.03.2021 and further submits that no dispute was raised with regard to the amount due either after the issue of demand notice under Section 8 or any time before that.
- 2.8 The Financial Creditor has relied on the ruling of supreme court in the case of Pioneer Urban Land and Infrastructure Limited and Anr Vs. Union of India and Ors in WP (Civil) No. 43 of 2019 which was given consequent to the passage of IBC (Amendment) Ordinance 2019, which allowed Property Buyers to be considered as Financial Creditors. Thus submitting, this Petition under Section 7 of IBC is triggered praying the Adjudicating Authority to initiate CIRP against the Corporate Debtor.
- 3.1 Counter is filed by Corporate Debtor, inter-alia, contending that originally the layout plan submitted for approval of HMDA was for 38 plots but the area reckoned after the final survey of the land by the Government, was 35 plots besides some part of the land was gifted to velimala Gram Panchayat for public purpose like building of roads and parks. The scheduled plans before and after the HMDA approval are annexed and marked as Exhibit-A and gift deed as Exhibit-B.
- 3.2 It is stated by the Corporate Debtor that the Financial Creditor entered into agreement of sale with Corporate Debtor for the plots as mentioned below for a total consideration calculated @ Rs. 7500/- p.sq.yard.



Plot No. 30,31,32,33 : 800 sq. yards date of agreement:
27.08.2016

Plot No. 23,24,25,26,27,28 : 1068 sq.yards date of agreement:
29.09.2016

3.3 It is contended that the agreements of sale were executed when plotting of lands was pending for approval by HMDA and the Financial Creditor was well aware about the delay in getting approval from HMDA . The Deed of Mortgage was mortgaged to HMDA not for a loan but in order to receive the in-principle approval for the plotting and development of the said land. The HMDA had the authority to choose which part of the land should be mortgaged and not the Financial Creditor.

3.4 It is submitted that pursuant to tremendous persuasion by Corporate Debtor, the technical approval of the layout by HMDA was received on 24.03.2017 for further plotting and development. However, the Financial Creditor failed to pay the balance consideration and register the plots in his or his nominee's name within one month as agreed upon.

3.5 The Financial Creditor then offered to sell the un-mortgaged plots of land which were originally agreed to be purchased by him at Rs. 7500/- per square yard, but tried selling to three parties for higher consideration of Rs. 9000/- for his benefit following the three Agreements of sale, which subsequently did not materialize.

3.6 Plot No. 30 was registered in favour of Mrs K. Vineela on 06.05.2017 by the CD only when the Financial Creditor failed to pay the balance consideration. Similarly, the CD was constrained to sell plot Nos. 32,



33 & 34 to other buyers owing to financial constraints and when the Financial Creditor failed to respond on payment of balance consideration, who originally agreed to pay within one month.

- 3.7 It is stated the plots were released from the mortgage of HMDA on 08.01.2019, subsequently on 29th march 2019 plot no's 25,26,27,28 and 29 admeasuring an area of 1335 Sq.Yards were registered in favour of financial creditor. The total sale consideration of above plots stated supra was Rs.1,00,12,500. After adjusting the advance amount of Rs.1.36 Cr, the balance due to the financial creditor was Rs.35,87,500, as against Rs.2,27,28,360 claimed by the financial creditor and the interest calculated has no basis. The next contention of the corporate debtor is that the proceedings are wrongly initiated as the debt amount is less than Rs.1,00,00,000.
- 3.8 The respondent further submitted that a civil suit bearing OS.NO:113 of 2020 was filed by the petitioner which is still pending. It is further contended that the petitioner portrayed that the total sale including development of the land was Rs.5,000 per sq.y whereas according to the corporate debtor, the plots were sold for Rs.7500 per sq.y i.e Rs.5000 per sq.y for registration of plots and Rs.2500 per sq.y was towards development.
- 3.9 The corporate debtor contends that the financial creditor intentionally concealed about pendency of various other suits in different courts and as such liable to be sued under Section.76 of IBC. The corporate debtor submits that there exists a serious dispute about the genuineness of the claim and hence the petition is liable to be dismissed.





4. Rejoinder is filed by the financial creditor reiterating the averments made in the petition. The financial creditor emphasised on Point No 3 read with points 8 and 15 in agreement of sale dated 27.08.2016 and point 3 read with point 9 and 16 in two agreements of sale dated 29.09.2016 shows that respondent is liable to refund the amount to the financial creditor with interest. Point No 3 of all three agreements is reproduced below.

‘Point 3 – If the vendor fails to get HMDA approval within three months of the agreement then vendor agrees to repay the amount paid by vendee within two months with an interest of 24% per annum.’

- 4.1 According to the financial creditor, the unsold and unencumbered plots should have been mortgaged to HMDA. However, the corporate debtor has suppressed the fact of execution of agreements of sale in favour of mortgaged plots to HMDA. In response to the corporate debtor’s contention that the financial creditor was unable to pay the balance money of sale consideration for the un-mortgaged plots and therefore the registration was not done, the financial creditor submits that the corporate debtor has suppressed the fact in the counter that he had paid Rs.26,70,000 as part of agreement of sale in respect of plot no 25 and 30. The said amount was sufficient to register plot no 30 in favour of petitioner as the total amount payable was only Rs.20,02,500 but the corporate debtor failed to register the same and in turn plot no 30 was illegally transferred to one Ms.Vineela.



- 4.2 In respect of plot no 25, 32 and 34, the financial creditor had originally paid Rs.40,00,000 pursuant to agreement of sale dated 27.08.2016. Simultaneously the respondent entered to agreements of sale with parties viz. Addepally Nagendra Srikanth, Mrs. S.Padmavati and Ramesh Chandra Vemuri respectively after taking token money from them without the knowledge of the petitioner. However, till date the plots were neither registered in the name of the petitioner nor in the name of the above mentioned parties and the money is yet to be received by the Financial Creditor. The petitioner therefore submits that the amount claimed by him is Rs.2,27,28,360 and not Rs.25,87,000 as stated by the corporate debtor.
5. In the light of the contest as aforesaid, the point that emerges for consideration of this Tribunal is;

Whether the financial debt payable by the Corporate Debtor exists, if so, whether the Corporate Debtor committed default?

6. We have heard the Leaned Counsel for the Petitioner as well as Ld. Counsel for the Respondent, perused the records and case laws submitted by the parties.

POINT

Whether the financial debt payable by the Corporate Debtor exists, if so, whether the Corporate Debtor committed default?

7. At the outset, it may be stated that admittedly subject dispute arose out of the three agreements of sale dated 27.08.2016, 29.09.2016 for sale of plots bearing No.30,31,32,33 & 23,24,25,26,27,28 in the layout that has been promoted and developed by the Respondent herein. It is





therefore, essential to ensure in this case, whether the financial creditor has satisfied the criteria as laid down in the first proviso to sub-section (1) of section 7 of IBC. According to the Applicant the total number of plots that were developed by the Respondents were 35. This fact is not denied by the Respondent/Corporate Debtor. Since the number of plots that the Applicant intended to purchase under the sale agreements being 9 (nine), the requirement 10% of the total number of such creditors in the same class for initiating of CIRP by the Applicant, remain satisfied.

8. This being an Application filed under Section 7 of IBC, we profitably rely on the ruling of Hon'ble Supreme Court in Mobilox Innovations Private Limited vs. Kirusa Software Private Limited. Wherein Hon'ble Supreme Court of India, it held that,

On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise." (Emphasis is ours).

9. Therefore, in the light of the above ruling, we proceed to decide the issue supra. As already stated the agreements of sale of plots referred above by the Financial Creditor with the Corporate Debtor is not in dispute. It is also a fact that after having entered into agreements aforesaid, the Corporate Debtor has entered into sale agreements for sale of plot nos 32, 25, 34 & 33 in favour of third parties for a sale consideration higher than what has been agreed in the sale agreement entered with the Applicant, stating that an increase in value of land per sq. yard will ensure to the benefit of financial creditor and





ultimately the Financial Creditor accepted the said agreements to sell plot nos. 25, 26, 27,28 & 29 in favour of third parties and for adjustment of the sale consideration to the tune of Rs.1,00,12,500. Therefore, out of 9 plots agreed to be sold, 5 plots have been disposed of with the consent and participation of the Financial Creditor. However, as the Corporate Debtor has neither registered their five plots, nor returned the consideration already paid by the Financial Creditor, the Applicant had initiated CIRP against the Corporate Debtor.

10. In the counter filed by the Corporate Debtor, the Corporate Debtor has admitted entering into agreement of sale as aforesaid and also the sale of the 5 plots for a higher sale consideration. It was further contended that there exists a serious dispute about the genuineness of the claim and a civil suit in OS.NO:113 of 2020 is filed by the Applicant before the Hon'ble District court at Sangareddy for specific purpose, as such the Application is not maintainable.
11. We are afraid in an application filed under Section 7 of IBC, the defence as aforesaid cannot be entertained.
12. In para 21 of the counter filed by the Corporate Debtor, the Corporate Debtor has categorically stated that "the above proves that the demand of Rs. 2,27,28,360/- by the Petitioner against the actual amount to be payable which is Rs. 35,87,500/- is unjust". So much so it is clear that the Corporate Debtor while admitting default of the payment of amount, further contended that the demand of Rs. 2,27,28,360/- is incorrect. Therefore, the default stands admitted categorically and unequivocally.



13. Now coming to the plea that the outstanding amount payable by the CD being Rs. 35,87,500/- and the threshold limit with effect from 24.03.2020 in terms of Section 4 of IBC for filing an Application of this nature being Rs. 1 crore, this Application is not maintainable, it may be stated that, while claiming a sum of Rs. 2,27,28,360/- as due and payment of which is defaulted, the Applicant has enclosed the document as to the computation of the amount. The said computation statement shows the amount parted with by the Applicant under the above sale agreements, in respect of five plots out of 9 plots agreed to be sold to the Applicant is Rs. 1,53,57,000/- and the amount claimed as interest is Rs. 73,71,360/-. We therefore, find no force in the contention of the Ld. Counsel for the Corporate Debtor that the Applicant does not satisfy section of 4 of IBC.
11. Therefore, in view of our discussion as above and careful consideration of the submissions made by the Ld. Counsel for both sides, upon perusal of records and written submissions, we are satisfied that the Applicant has established financial debt of value of Rs. 2,27,28,360/- due and payable by the Corporate Debtor and its default. Therefore, it is a fit case to order CIRP against the Corporate Debtor. We therefore accordingly allow this Petition and order CIRP against the Corporate Debtor.



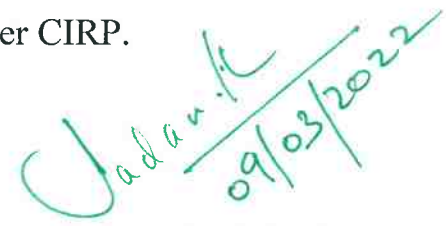
ORDER

- (1) The Bench hereby prohibits 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; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- (2) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (3) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) That the order of moratorium shall have effect from date of this order till the 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, whichever is earlier.



- (5) This Bench hereby appoints **Mr. Abhay Kumar Jain, IBBI Registration No. IBBI/IPA-002/IP-N00515/2017-18/11562** email: caabhayjain1@gmail.com # R/o 205, Doshi Chambers, Basheerbagh, Hyderabad, TS- 500029 who has given his consent in Form-2.
- (6) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.
- (7) The Financial Creditor is directed to communicate this order to the IRP appointed in this case.
- (8) Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.


(Veera Brahma Rao Arekapudi)
Member (Technical)


(Dr. N. Venkata Ramakrishna Badarinath)
Member (Judicial)

Binnu