

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

**C.P.(IB)No.65/BB/2022**  
**U/S.7 of IBC, 2016**  
**R/w. Rule 4 of I&B (AAA) Rules, 2016**

**IN THE MATTER OF:**

**Mr. Vicky Motilal Vani & Ors.**

R/a. Embassy Pristine,  
Behind Suncity Apartments,  
Iblur Village,  
Bengaluru – 560 103

- Petitioner/Financial Creditor

**VERSUS**

**M/s. Malind Properties Private Limited**

R/o. at No.87-A,  
Purva Parkridge Mahadevapura Post,  
Garudacharpalya  
Bangalore– 560 048

- Respondent/Corporate Debtor

**Order delivered on: 28<sup>th</sup> February 2023**

**CORAM:** Hon'ble Justice (Retd) T.Krishnavalli, Member (Judicial)  
Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner : Shri Abhijit Atur with Shri Srivatsa Rao  
For the Respondent : Shri Harikrishna Pramod

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present Petition is filed on 21.02.2022 under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') by Mr. Vicky Motilal Vani & Ors. (hereinafter referred to as 'Petitioner/Financial Creditor') to initiate the Corporate Insolvency Resolution Process ('CIRP')

against M/s. Malind Properties Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor'). It is noticed that there are 23 applicants in all, who are allottees of 29 units in the Residential Project developed by the Corporate Debtor; the applicant Mr. Vicky Motilal Vani being the lead applicant who is allotted six flats in the Project. Mr. B.P. Venkata Raghu Babu is the applicant no.2; holding the authorisation and Power of Attorney from all the other unit holders to file this application under Section 7. The aforesaid is supported by an affidavit dated 3.02.2022. The details of the applicants /financial creditors, along with the date of agreement & delivery is given as under:

Name of the allottee/s	Flat No(s).	Date of execution of construction agreement	Promised date of delivery of flat
<b>1.</b> (a) Mr. Vicky Motilal Vani; (b) Mrs. Manjeet Vicky Vani:	D - 109	31.12.2014	01.01.2018
	D - 406	31.12.2014	01.01.2018
	D - 707	31.12.2014	01.01.2018
	D - 708	31.12.2014	01.01.2018
	D - 709	31.12.2014	01.01.2018
	D - 809	31.12.2014	01.01.2018
<b>2.</b> Mr. B. P. Venkata Raghu Babu	E - 108	01.08.2013	01.08.2016
<b>3.</b> (a) Mrs. Krattika Vinayak Kamat, and (b) Mr. Vinayak Janardhan Kamat	E - 202	14.04.2014	14.04.2017
	E-203	14.04.2014	14.04.2017
<b>4.</b> Mr. Lakshminarasimhan Varadadesikan	E - 403	(Construction agreement not available)  Sale agreement executed on	15.01.2018

		16.01.2015	
<b>5.</b> Mr. Venkat Bhupati Rao	E - 310	29.10.2013	15.04.2017
<b>6.</b> Mr. Nandakishore Atur	E - 204	19.06.2018	19.06.2021
<b>7.</b> Mr. Sunil Gavaskar Atyam	D - 402	01.08.2015	01.08.2018
<b>8.</b> Mr. Ashok Pedda	E - 704	19.06.2013	19.06.2016
<b>9.</b> (a) Mrs. Poonam Karnwal and (b) Mr. Ashutosh Karnwal	E - 707	11.09.2014	11.09.2017
<b>10.</b> (a) Mrs. Miya Viji, and Mr. Sudhin Mathew Skaria	E-607	30.05.2014	30.05.2017
<b>11.</b> Mr. Venkata NagakiranEluri	D - 401	17.11.2017	17.11.2020
<b>12.</b> (a) Mr. Srinivasa Rangan, and (b) Mrs. Savitha Rangan	D - 802	17.11.2017	23.12.2017
<b>13.</b> Mr. Sudhakar Koduri	E - 104	26.03.2014	15.04.2017
<b>14.</b> (a) Mrs. S. Harini and (b) K. N. Gireesha	E - 609	22.11.2013	22.11.2016
<b>15.</b> Mr. Ajay C Aggarwal	E - 711	22.11.2013	16.09.2016
<b>16.</b> (a) Mrs. Swathi Srikanth, and (b) Mr. Srikanth Srinivasan	D -107	(Construction agreement not available)  Sale agreement dated 21.02.2015	22.02.2018
<b>17.</b> (a) Mrs. Smruti Sujay Dangi (b) Mr. Sujay Suresh Dangi	E - 205	(Construction agreement not available)  Sale agreement dated 18.02.2014	18.02.2016

<b>18.</b>	Mr. Pradeep Atur	—	01.08.2013	01.08.2016
<b>19.</b>	(a) Mr. Sameer Kerpal and (b) Mrs. Aarti Kerpal	E - 706	(Construction agreement not available)  Sale agreement dated 20.06.2014	20.06.2016
<b>20.</b>	Mr. Jayaprakash Panakam	E - 208	28.06.2013	16.05.2016
<b>21.</b>	Mr. P. SharanaBasavana Goud	E - 705	19.06.2013	19.06.2016
<b>22.</b>	(a) Mr. MugaliVeeresh, and (b) Mr. KarbasappaMugali	E - 105	04.12.2013	04.12.2016
<b>23.</b>	M/s. National Education & Information Films Ltd.,	E - 601	(Construction agreement not available)  Sale agreement dated 25.04.2014	25.05.2016

- 2.** The Corporate Debtor viz., M/s. Malind Properties Private Limited is a Company incorporated on 08.11.2005 under the provisions of Companies Act, 1956 with CIN: U45200KA2005PTC062549 having its registered office at No.87-A, Purva Parkridge Mahadevapura Post, Garudacharpalya - 560 048, which falls within the territorial jurisdiction of this Adjudicating Authority. The Authorised Share Capital of the Respondent/Corporate Debtor is Rs.3,10,00,000/- and the Paid-up Share Capital is Rs.3,04,79,500/- as per the Company Master Data attached at Annexure-C of this Petition.
- 3.** Brief facts of the case, as mentioned in the instant Petition, which are relevant to the issue in question, are as follows:
- i).** The Financial Creditors had made booking in a project being developed by the Corporate Debtor herein namely, 'Malind Tropika Gardens'

69/2,Village,Anekal Taluk,Chandapura,Bangalore 560099 (herein after referred as the 'Project'). The Corporate Debtor has entered into a Joint Development Agreement dated 02.03.2007 with the owner of the land on which the project is proposed to be constructed. Thereafter, Construction agreements were executed by and between the Financial Creditor and the Corporate Debtor. The Financial Creditors were allotted different unit numbers, the details of which are described in Annexure A.

**ii).** Furthermore each of the Financial Creditors entered into agreements for sale with the owners of the land. Pursuant to such agreements, the Financial Creditors made payments to the Corporate Debtor for the purpose of construction and sale of the flats. There were a total of 23 applicants having been allotted 29 units filing this application jointly, as reflected from Form 1.

**iii).** Although the Corporate Debtor commenced construction, in October, 2015, the construction activity came to a standstill. Despite repeated requests, the Corporate Debtor did not resume construction activity and cited shortage of funds as the reason, thus leaving the Financial Creditors aggrieved.

**iv).** The Corporate Debtor repeatedly approached the Financial Creditors with requests for additional funds. The Financial Creditors have paid the consideration as per their respective agreements in a timely manner.

**v).** Given the lack of progress in construction despite timely payment by the Financial Creditors and the frivolous excuses provided by the Corporate Debtor, the Financial Creditors lost faith in the Corporate Debtor.

**vi).** Contrary to various commitments and assurances provided to the Financial Creditors, the Corporate Debtor has failed to complete the stages of construction. To the grave disappointment of the Financial Creditors, the project is still at a very nascent stage. The Financial Creditors understand that the Corporate Debtor does not have a valid and subsisting registration for the project under the Real Estate (Regulation & Development) Act, 2016. It has been reliably learnt that the sanction plan of the Project has also lapsed.

**vii).** The Financial Creditors have made multiple attempts to contact the Corporate Debtor and seek resolution, but to no avail. The Corporate Debtor has misused the patience and trust placed by the Financial Creditors till date. The Corporate Debtor has no intention to honour the Agreements for sale and construction and deliver the flats.

**viii).** Prior to the filing of the present Application, the Financial Creditors have reported default of their respective financial debt to the information utility. Despite receipt of intimation from the information utility, the Corporate Debtor has continued to remain unresponsive. The report of default is hence deemed to be authenticated.

**ix).** It is stated that the Corporate Debtor has committed default of financial debt of a total amount of Rs.6,81,31,524/-, and has expressed lack of sufficiency of funds to complete the project. Hence, the Financial Creditors, despite having invested their lifetime savings/availed loans towards paying the Corporate Debtor, are not likely to receive their respective flats. Nor has the Corporate Debtor returned the amounts paid by the Financial Creditors.

**x).** It is further stated that the Corporate Debtor has remained inactive since 2015. It has ceased to carry on operations and has not been filing its statutory returns. It is just and necessary to commence the CIRP in respect of the Corporate Debtor, so that the Financial Creditors are able to receive possession of constructed flats for which they have made payment. For all these reasons, the Financial Creditors have filed the present Company Petition before this Adjudicating Authority U/S.7 of the Code.

- 4.** In support of its submissions, the Petitioners *inter alia* filed copies of Allotment Letters, Agreements to Sell and Construction Agreement of the financial creditors. The applicants No.1 & 2 also filed NeSL Form C and report of default in respect of Flats Nos. D-109,D-406,D707,D708,D709,D809 and E-108 along with the Petition.
- 5.** On 24.11.2022, this Adjudicating Authority directed the Petitioner's Counsel to file the missing Construction Agreement in respect of Sr.Nos 4,8,12,13,15,16,17,19 and 23 along with other missing documents. He was also directed to file the details of all the 29 Petitioners with their

corresponding flats nos by clearly mentioning the promised date of delivery in respect of each flat with reference to their respective agreement of Sale/Construction agreements with grace period allowed and missing Allotment Letters of allottees. The aforesaid compliance was made by the Petitioner Counsels vide diary no 385 dated 20.01.2023. The applicants memo is reproduced as under:-

- (a)** It is submitted that the Petitioners No.4,8,12,13,15,16,17,19 and 23 do not possess the construction agreement copies with them even though they had transferred monies to the Corporate Debtor. The aforementioned Petitioners have also requested the representatives of the Corporate Debtor to furnish the required details.
- (b)** However, the representatives of the Corporate Debtor informed the said Petitioners that the required records are unavailable since the Corporate Debtor has not been operational for quite some time. Therefore, it is submitted that the said petition were not able to produce the said construction agreements before this Tribunal.
- (c)** It is submitted that Petitioners in this case have furnished at least one of the documents mentioned in Para 5 of the said memo to prove that they are allottees of the Corporate Debtor in respect of the project 'Malind Tropika' towards their respective flats.
- (d)** It is further submitted that the said project, only Towers D,E and F have either been partially or fully allotted. The number of allottees is 15 in Tower D, 54 in Tower E and 7 in Tower F (76 in total)
- (e)** The instant application is being filed by a total of 23 allottees which far exceeds the 10% of the total allottees in the Project required to file an application is maintainable.
- (f)** Furthermore, the Hon'ble Supreme Court in para 175 of *Manish Kumar v. Union of India and Others reported at (2021) 5 SCC*, has held that even if the default in respect of one of the Financial Creditor is within limitation, the petition is maintainable as against all the Petitioners. Since in the present case, the date of default in respect of

few of the allottees is 2020 and 2021, the present Petition is maintainable.

6. One of Directors of the Corporate Debtor has filed an Affidavits vide diary no 3963 dated 19.09.2022 & diary no 415 dated 23.01.2023, expressing the no objection for admission of the application under Section 7, by *inter alia* contending as under:
- a) It is stated that the Corporate Debtor has filed an affidavit before this Tribunal stating that Corporate Debtor herein is not in a position to complete the project undertaken by it due to health issues faced by the promoters.
  - b) It submitted that the few of the petitioners have reached out to her for providing them the documents such as allotment letter, construction agreement and agreement to sell as they apparently don't have copies of the same. Currently, the corporate debtor has no working office, and the documents are not readily available. Due to the health problems faced by the directors, they were unable to operate the corporate debtor.
  - c) The allottee have invested their hard- earned money and due to the unfortunate situation faced by the promoters of the corporate debtor, they were unable to continue the construction. Therefore, in the interest of the allottees, the Corporate Debtor has decided to transfer the project to any third-party developer interested in completing the project. The Corporate debtor has admitted that all allottees under the project and the list of all the allottees as per Annexure A hereto. Also, the Corporate Debtor is not registered with RERA as the construction activity was stalled due to personal problems of the Promoters.
  - d) It is submitted that all the allottees in this petition had transferred amounts to the Corporate Debtor and that the Corporate Debtor has defaulted on its obligations by not completing the project within the specified period of time.

7. Heard Shri.Abhijit Atur with Shri Srivatsa, learned Counsel for the Financial Creditors and Shri. Harikrishna Pramod for the Corporate Debtor. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Rules made there under.
8. In the present case, as per the documents produced by the Petitioners, the subject Project i.e., '*Malind Tropika Gardens*' consisted of a total number of 76 Flats whereas the instant application is being filed by a total of 23 allottees which far exceeds the 10% of the total allottees in the Project and accordingly have satisfied the threshold limit condition. In fact, an affidavit filed by the Respondent dated 16.09.2022 and 23.01.2023 in para 7 and para 5 has admitted the debt.
9. The other issue to be examined is whether the CP is filed within the period of limitation. As per the documents of the respondents/Corporate Debtor itself the Project has to be completed and the flats are required to be delivered between June 2016 to June 2021. The Corporate Debtor had vide its affidavit dated 16.09.2022 and 23.01.2023 in Para 7 and Para 5 has admitted to the default that they were unable to complete the Project in time and all the allottees in the petition had transferred amounts to the Corporate Debtor. Considering the above and the judgement of Hon'ble Supreme Court cited by the applicant in memo filed on 20.01.2023; since the CP is filed on 21.02.2022, the same is within the period of limitation. Accordingly, for the reasons stated above, the C.P. is liable to be admitted.
10. 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 "**Malind Tropika Gardens**" Project of Respondent-M/s. **Malind Properties Private Limited**, under Section 7 of the IBC, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences 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 Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator 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 passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;
- 11.** In Part-III of Form No.1, Mr. Ratnakar Shetty, Registration No. IBBI/ IPA-001/IP-P01630/2019-20/12718 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 10.02.2021 at page 885-887, wherein he has declared that no disciplinary proceedings are pending against him. 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.** The Law Research Associate of this Tribunal has checked the credentials Mr. Ratnakar Shetty and there is nothing adverse against him. In view of the

above, we appoint Ratnakar Shetty, bearing Registration No. IBBI/IPA-001/IP-P01630/2019-20/12718, registered address at No.F507, Mantri Tranquil Apartment, Gubbalala Gate, Kanakapura Road, Bangalore – 560 061, e-mail: [rcshetty.co@gmail.com](mailto:rcshetty.co@gmail.com) as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

13. The Financial Creditor shall deposits 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.
14. The Interim Resolution Professional shall after collation of all the claims received against 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.
15. 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 his e-mail address forthwith.

**-sd-**

**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

**-sd-**

**(T.KRISHNAVALLI)  
MEMBER (JUDICIAL)**