

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No. 92/BB/2018
U/s 7 of IBC, 2016
R/w Rule 4 of I&B(AAA) Rules, 2016

In the matter of:

Shri P. Pradeep Kumar
No.3, Mallige Mane, 4th 'A' Main,
1st Cross, Chandramma Layout,
Doddabanaswadi,
Bangalore-560 043. & 7 others - Petitioners / Financial Creditors

Versus

M/s.GruhaKalyanHousing Projects Pvt. Ltd.
#32/A, 9th Main, 6th Sector, HSR Near
Empire Hotel
Bangalore – 560 102. -Respondent/Corporate Debtor

Date of Order: 27th June, 2019

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
 2. Hon'ble Dr. Ashok Kumar Mishra, Member (Technical)

Parties/Counsel Present:

For the Petitioners : Ms. T.O.Rajitha
For the Respondent : None

ORDER

Per: Rajeswara Rao Vittanala, Member (Judicial)

1. C.P. (IB) No.92/BB/2018 is filed by ShriMallikarjun M Karadi and 6 others representing by Shri P. Pradeep Kumar ('Petitioners/Financial Creditors') under Section 7 of the IBC, 2016 read with Rule 4 of the I&B (Application to Adjudicating Authority) Rules, 2016, by inter alia seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s.Gruha Kalyan Housing Projects Private Limited ('Respondent/Corporate



Debtor'), on the ground that the Corporate Debtor committed default for an amount of Rs.43,65,000/- (Rupees Forty Three Lakhs Sixty Five Thousand only).

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) M/s.GruhaKalyan Housing Projects Private Limited ('Respondent/Corporate Debtor') was incorporated on 28.09.2016 under the provisions of the Companies Act vide CIN: U45201KA2016PTC096802. The Authorized Share Capital of the Company is Rs.10,00,000/- (Rupees Ten Lakhs Only) and Paid-up Share Capital of the Company is Rs.10,00,000/- (Rupees Ten Lakhs Only). The Company is engaged in the business of construction in the real estate sector. The Financial Creditors are home buyers, who had invested huge amount in buying residential apartments from the Corporate Debtor.

(2) The Corporate Debtor had entered into Memorandum of Understandings as detailed below , with Financial Creditor for the project Gruha Kalyan Lotus, and subsequently issued a cancellation form dated 06.11.2015.However, the Corporate Debtor failed to construct and deliver the flats as agreed upon, and therefore the Financial Creditors demanded the repayment of the amount already paid to the Corporate Debtor.

The Corporate Debtor herein has entered into Memorandum of Understanding with the following parties:

<i>First Party of MoU</i>	<i>Second Party of MoU</i>	<i>MoU Entered On</i>	<i>Cancellation Form/ Commitment Letter</i>
Gruha Kalyan	Mrs.Bindu T	28.06.2015	Cancellation Form dated 06.11.2016

Gruha Kalyan	Mr.Mallikarjun M Karadi	06.09.2016	Cancellation Form dated 14.10.2016
Gruha Kalyan	Mr.R.Ravindra Babu	19.10.2015	Commitment Letter dated 04.08.2016
Gruha Kalyan	Mr.Katta Chiranjeevi	30.10.2015	Commitment Letter dated 04.08.2016
Gruha Kalyan	Mr.U.P.Bairappa	19.10.2015	Commitment Letter dated 04.08.2016
Gruha Kalyan	Mr.Santosh Kumar	20.11.2015	Commitment Letter dated 04.08.2016
Gruha Kalyan	Mrs.Usha Venkatesh	12.03.2016	Cancellation Form dated 13.08.2016
Gruha Kalyan	Mr.S.Venkatesh	12.03.2016	Cancellation Form dated 09.01.2017

(3) Therefore, the Financial Creditors have demanded for repayment of the amounts already paid by them and thus Corporate Debtor has issued cheques to the Financial Creditors as detailed below:

- a) Rs.6,00,000/- (Rupees Six Lakhs Only) vide Cheque No.552037 dated 09.02.2017 and Rs.4,35,000/- (Rupees Four Lakhs Thirty Five Thousand Only) vide Cheque No.552018 dated 10.02.2018 total amount being Rs.10,35,000/- (Rupees Ten Lakhs Thirty Five Thousand Only) to **Mr.P.Pradeep Kumar.**
- b) Rs.1,00,000/- (Rupees One Lakh Only) vide Cheque No.487116 dated 25.01.2017 to **Mr. Mallikarjun M.Karadi.**
- c) Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand Only) vide Cheque No.486964 dated 18.02.2017 to **Mr.Raveendra Babu.**
- d) Rs.3,30,000/- (Rupees Three Lakhs Thirty Thousand Only) vide Cheque No.486970 dated 27.02.2017 to Mr.Katta Chiranjeevi.
- e) Rs.2,10,000/- (Rupees Two Lakhs Ten Thousand Only) vide Cheque No.486965 dated 18.02.2017 to **Mr. U.P. Bairappa.**

- f) Rs.2,65,000/- (Rupees Two Lakhs Sixty Five Thousand Only) vide Cheque No.486966 dated 18.02.2017 to **Mr.Santosh Kumar**
- g) Rs.3,00,000/- (Rupees Three Lakhs Only) vide Cheque No.447933 dated 20.11.2016, Rs.3,00,000/- (Rupees Three Lakhs Only) vide Cheque No.447934 dated 30.11.2016, Rs.3,00,000/- (Rupees Three Lakhs Only) vide Cheque No.447935 dated 10.12.2016, Rs.4,00,000/- (Rupees Four Lakhs Only) vide Cheque No.447936 dated 20.12.2016 – the total amount being Rs.13,00,000/- (Rupees Thirteen Lakhs Only) to **Smt.UshaVenkatesh.**
- h) Rs.9,50,000/- (Rupees Nine Lakhs Fifty Thousand Only) vide Cheque No.551988 dated 11.04.2017 to **Mr.S.Venkatesh.**
- i) All the above cheques were drawn on Axis Bank. When the above cheques were deposited by the Financial Creditors with their Bankers and to their surprise, those cheques were dishonoured either to due funds insufficient or Account blocked as detailed below. The total debt due to the Financial Creditors is Rs.43,65,000/- (Rupees Forty Three Lakhs Sixty Five Thousand Only).

Name on Cheque	Cheque deposited in	Cheque Amount (Rs.)	Date of Cheque	Status of Cheque Clearance
Mr.P.Pradeep Kumar	ICICI Bank	6,00,000	09.02.2017	Funds Insufficient
		4,35,500	10.02.2017	
Mr.Mallikarjun M. Karadi	Axis Bank	1,00,000/-	25.01.2017	
Mr.R.Ravindra Babu	Axis Bank	1,75,000	18.02.2017	----
Mr.Chiranjeevi.K	Axis Bank	3,30,000	27.02.2017	Account Blocked
Mr.U.P. Bairappa	Axis Bank	2,10,000	18.02.2017	
Mr.Santosh	Axis Bank	2,65,000	18.02.2017	-----



Kumar				
Smt. Usha.Venkat esh.V	Axis Bank	3,00,000	20.11.2016	Funds Insufficient
		3,00,000	30.11.2016	
		3,00,000	10.12.2016	
		4,00,000	20.12.2016	
Mr.S.Venkatesh	Corporation Bank	9,50,000	11.04.2017	----

(4) The Corporate Debtor failed to pay the amount as mentioned herein above and therefore the Financial Creditors had filed the instant Company Petition.

3. Heard Ms.Rajitha T.O., learned Counsel for the Petitioner. We have carefully perused the pleadings of the party and extant provisions of the Code.
4. The Tribunal ordered notice on 25.09.2018 to the Corporate Debtor. Accordingly, Registry has issued a notice dated 12.10.2018. However, notice was not served on the Company, and thus I.A. No.412 of 2018 was filed by on behalf of Petitioner requesting for issue of notice through paper publication and the same was allowed on 29.11.2018. Subsequently, the Petitioner caused paper publication on 19.12.2018 in "New India Express" and in "Kannada Prabha", Kannada Newspaper. In spite of the same, the Corporate Debtor failed to appear before this Tribunal till date. Therefore, the service on the Corporate Debtor deemed to be completed and thus we are inclined to proceed with the case. Admittedly, all the Petitioners together paid an amount of Rs.43,65,000/- to the Corporate Debtor and the amount is still to be paid by the Corporate Debtor committing default as detailed supra. And the Corporate Debtor has not responded to the notice issued by the Tribunal dated 25.09.2019 and also for the paper publication. Therefore, it is to be concluded that the Corporate



debtor has committed default for total amount of Rs.43,65,000/- to Financial Creditors and has not paid till date.

5. We find that the petition/application has filed the instant petition strictly in accordance with law and also proposed Ms. Medha Kulkarni, a qualified Insolvency Professional, as Interim Resolution Professional to be appointed. She has also given Form-2 in Written Communication dated 10.01.2019, by inter alia stating that she is a qualified Insolvency Professional having Regn.No.IBBI/IPA-001/IP-P00121/2017-18/10263 and no disciplinary proceedings are pending against her with the Board or Indian Institute of Insolvency Professionals of ICAI. She has also filed an Affidavit dated 10.01.2019 to that effect. Therefore, we are of the considered opinion that the instant case is a fit case to admit by initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, appointing IRP, Moratorium etc., as per the Code.
6. In view of the above facts and circumstances of the case, and by exercising powers conferred on this Adjudicating Authority, under Section 7(5)(a) and other extant provisions of the Code, C.P. (IB) No.92/BB/2018 is hereby admitted with the following consequential directions:

- (1) We hereby appointed **Ms.Medha Kulkarni** with **Regn.No.IBBI/IPA-001/IP-P00121/2017-18/10263**, as the Interim Resolution Professional (IRP) to conduct the Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor namely M/s.Gruha Kalyan Housing Projects Private Limited to carry out the functions as mentioned under the I&B Code, 2016 and the Rules framed by the IBBI from time to time.



(2) The following moratorium is declared prohibiting all of the following, namely:

- 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. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- f. The provisions of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial regulator.
- g. The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process.



- (3) The IRP is directed to follow all extant provisions of the IBC, 2016 and the Rules including fees rules as framed by the IBBI from time to time.
- (4) The Board of Directors and all the staff of the Corporate Debtor are hereby directed to extend full co-operation to the IRP, in carrying out her functions as such, under the Code and Rules made by the IBBI.
- (5) The IRP is directed to file her progress reports to the Tribunal from time to time about the steps taken in pursuant to the CIRP. The IRP is further directed to take expeditious steps so as to complete the process of CIRP within the stipulated time.
- (6) Post the case for report of the IRP on 31st July, 2019.


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL


(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

Raushan