

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 09.09.2020

THROUGH VIDEO CONFERENCING

CAUSE LIST

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(IB)No. 92/BB/2018	For pronouncement of orders on IA 110/2020 IA 219/2020 IA 247/2020 - CIRP	Sec 7 of I&B Code 2016	Sri P Pradeep Kumar and others	India Law LLP Advocates	M/s Gruha Kalyan Housing Projects Pvt Ltd	Shankar B Iyer RP

ADVOCATE FOR PETITIONER/s:

MR. SHANKAR B IYER - R.P

ADVOCATE FOR RESPONDENT/s:

ORDER

I.A No. 110 & 247 of 2020 is rejected by separate order.

I.A No. 219 of 2020 is disposed by separate order

Post the case for report of Liquidator on 09.11.2020


MEMBER (T)


MEMBER (J)

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

I.A. No.110 of 2020 in
C.P (IB) No.92/BB/2018
U/s. 60(5) (C) of the IBC 2016
R/w Rule 11 of the NCLT Rules, 2016

Between:

Mr. Shankar B Iyer

*(Resolution Professional of
M/s Gruha Kalyan Housing Projects Pvt Ltd)*

C-203, Shriram Samruddhi,
Varthur Main Road,
Bangalore - 560 066

... Applicant/RP

And

Mr. Ashok Kriplani,

*(Resolution Professional in CP (IB) No. 84/BB/2019)
i.e. of M/s Dreamz Infra India Limited)*

10/18, (FF), Old Rajinder Nagar,
New Delhi - 60

... Respondent

Date of Order: 9th September 2020

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

The Applicant : Mr. Shankar.B.Iyer

For the Respondent : Mr. A Mahesh Chowdhary

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No. 110 of 2020 in C.P. (IB) No. 92/BB/2018 is filed by Mr. Shankar.B.Iyer (hereinafter referred to as 'Applicant /RP) Under Section 60(5) (C) of the IBC 2016, R/w. Rule 11 of NCLT Rules, 2016


Page 1 of 6

against Mr. Ashok Kriplani (Respondent) by *inter-alia* seeking to direct the Resolution Professional of M/s Dreamz Infra India Limited to join hands with him to initiate group Insolvency of M/s Dreamz Infra India Limited (DIIL) and M/s. Gruha Kalyan Housing Projects Pvt Ltd (CD), otherwise the Applicant would be put to untold hardship and loss.

2. Briefs facts of the case, which are relevant to the issue in question, are as follows:

(1) C.P (IB) No. 92/BB/2018 filed by Mr. P. Pradeep Kumar & others (Financial Creditor) U/s 7 the Code R/w Rule 4 of I&B (AAA) Rules, 2016 by *inter alia* seeking to initiate CIRP in respect of M/s. Gruha Kalyan Housing Projects Pvt Ltd (Corporate Debtor) on the ground that it has committed a default for an amount of Rs.43,65,000/-, was admitted by the Adjudicating Authority, by an order dated 27.06.2019, by initiating CIRP and appointing Ms. Medha Kulkarni as IRP, imposing moratorium etc. However, the COC has changed the said IRP and nominated the Applicant herein as the Resolution Professional and the same was approved by AA vide its order dated 09.09.2019.

(2) The Applicant could not to establish a relationship as a Group Company under the definitions of the Companies Act. However, it is alleged that the mastermind of duping/intentionally defrauding innocent home buyers in 3 Real Estate Projects (Dreams Infra, Gruha Kalyan and TGS) is Sachin Naik. He would like to summon the Directors of the CD namely Mr. Siddarudaha Hunashikatti and Mr. Puttegowda Jaggesha to testify to the fact of the fraud perpetrated by Sachin Naik in both the entities. In the Forensic Audit Report provided by the C.A firm Amruthesh at the instance of the CID, Bangalore conducted on the activities and books of accounts of the C.D. This brings out the diversion of funds of Rs.18.92 Crores from



Gruha Kalyan to Dreamz Infra and to TGS Constructions Pvt Ltd of Rs.5.11 Crores. The testification made by said Sachin Naik, has confessed to Diversion of funds to Dreamz Infra Limited from Gruha Kalyan before CID. As per his testimony, Gruha Kalyan was in fact incorporated to raise more funds to complete Dreamz Projects.

(3) It is alleged that funds have been moved out to complete projects in Dreamz Infra Limited among other diversions and thus create assets there at the cost of the Home Buyers of the CD. He has submitted a claim under Sec.7 to the Respondent and also requested to work towards Group Resolution, which will benefit the Creditors of both the entities and especially the home buyer's creditors Gruha Kalyan It will not be a burden on the Homebuyers of Dreamz Infra India Limited beyond the diversion of funds to Dreamz Infra of Rs.18.92 Cr.

3. The Respondent has filed a Reply dated 14.03.2020 by *inter-alia* contending as follows:

(1) The Instant Application suffers from delays and laches as the same has been preferred at almost the end of the CD's CIRP, which seems to have been not taken off due to various reasons amongst most importantly is the non-cooperation of the office of the Assistant Commissioner, Revenue. The Group Insolvency at this stage will act like a rock chained to the CIRP of DIIL, which act will drown he CIRP in DIIL. IM Provisionally has already been made in the CIRP of the DIIL and RFRP is on the way of finalisation. The Applicant has failed to show an inter-dependency of the two Companies on each other as that can be the only reason for Group Insolvency and not the Fraudulent Transactions, if any, as alleged.

(2) The expression "Group Insolvency" has not been defined in the Code and it is only recommendation of the "Working Group" and it has not provision of the Code. Therefore, the Application is not

maintainable. Referring three companies as a group Companies without attaching any evidence thereof does not make necessary the two Companies as a Group Company and nor the statement made by Mr. Sachin Naik who had no shareholding in the two companies to the best of knowledge of the Respondent, before the police, which is an inadmissible evidence unless corroborated.

- (3) The Applicant had not demonstrated that DIIL is holding/subsidiary of the Gruha Kalyan or vice versa in term of Companies Act, 2013, further, the expression "Group Companies" is not defined in the Companies Act, 2013, therefore, the proposal by the Applicant do not stand in the eye of law. The "Audit Report" submitted by the Mr. Amruthesh is not a "Forensic Audit Report", since, it is just Audit Report dated 01.06.2018 addressed to the Investigation officer stating under the subject as "Audit report of the Gruha Kalyan" and not as claimed by the Applicant as "Forensic Audit Report".
4. Heard Mr. Shankar.B.Iyer, the Applicant and Mr. A Mahesh Chowdhary, learned Counsel for the Respondent, **through Video Conference**. We have carefully perused the pleadings of both the Parties and the extant provisions of the Code, and the Rules made there under.
5. The instant Application has been filed U/s. 60(5) (C) of the Code, 2016 and Rule 11 of NCLT Rules, 2016. Section 60(5) of the Code read as under :
- " 60(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of—
- (a) any application or proceeding by or against the corporate debtor or corporate person;



(b) any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and

(c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

The Applicant, without filing an Application/Petition, in the first instance, seeking to initiate Group Insolvency in respect of CD of Applicant and the CD of Respondent, has filed the instant Application by seeking direction to the Respondent to join hands with him to initiate Group Resolution Proceedings. Moreover, the said provision should be read with reference to the consequential issues arise during the course of CIRP Proceedings, and it cannot permit the Applicant to initiate substantial proceedings like Group Insolvency. Admittedly, there is no substantial provisions incorporated either in the Code and Companies Act, 2013. However, depending on facts and circumstances of each, Court/Tribunal sometimes used to initiate Group insolvency. Moreover, the Applicant totally failed to understand the concept of Group Insolvency and just filed the instant Application as he likes, burdening the Adjudicating Authority to adjudicate this frivolous Application. The Applicant, instead of discharging his statutory duties so as to conclude CIRP in prescribed time lines, as prescribed under provisions of Code and the Rules made thereunder, is resorting to file un-tenable Applications. The Applicant has also filed claim of CD to the Respondent and instead of pursuing his claim, he has filed the instant Application.

6. As stated supra, the Applicant himself admitted that he was unable to establish relationship of the Corporate Debtor as a group Company of other Companies. It is also relevant to point out here that the Revenue Department has already initiated necessary action in respect of Financial Establishments with M/s Dreamz Infra India Pvt Ltd,



M/s Gruha Kalyan Pvt Ltd, M/s TGS Constructions Pvt Ltd and other allied Companies/entities involved in the fraudulent transactions, vide notification No. RD 17 GRC 2017, (P-2) Bengaluru, Dated 20.06.2019. The property secured by all these entities and other Companies have already been attached and they are with the Government authority. Therefore, the contention of the Applicant for initiation of Group Insolvency is essential in the instant case is baseless and not tenable.

7. After admission of the Case , the Applicant has earlier file **I.A No. 684 of 2019 seeking** extension of period of CIRP by 90 days beyond the Statutory period of 180 days, and the same was allowed by Tribunal vide order dated 03.01.2020. Subsequently, also the Applicant as filed several Miscellaneous Application seeking various directions. However, the Applicant is interested to file one Application or the other on un-tenable grounds, without properly discharging his duties in accordance with law.
8. For the aforesaid reasons and circumstances of the case, we are of considered opinion that the Applicant failed to make out even prima facie to entertain the Application, and it is liable to be rejected with costs. However, by taking a lenient view, we are not imposing costs at present in the instant Application.
9. In the result, **I.A No. 110 of 2020** in CP (IB) No. 92/BB/2018 is hereby rejected. No orders as to cost.

ASHUTOSH CHANDRA
MEMBER, TECHNICAL

RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL

Brunda

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

I.A. No.247of 2020 in
C.P (IB) No.92/BB/2018
U/s. 60 Ss.5c of the IBC 2016
R/w Rule 11 of the NCLT Rules, 2016

In the matter of :

Mr. Shankar B Iyer

*(Resolution Professiona of
M/s Gruha Kalyan Housing Projects Pvt Ltd)*

C-203, Shriram Samruddhi,
Varthur Main Road,
Bangalore – 560 066

... Applicant/RP

Date of Order: 9th September, 2020

- Coram:**
1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
 2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conference):

The Applicant : Mr. Shankar.B.Iyer

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A. No. 247 of 2020 in C.P. (IB) No. 92/BB/2018 is filed by Mr. Shankar.B.Iyer (hereinafter referred to as 'Applicant /RP) Under Section 60 Ss. 5C of the IBC 2016, R/w. Rule 11 of NCLT Rules, 2016 by *inter-alia* seeking to lift the Corporate Veil between Gruha Kalyan Housing Projects Pvt Ltd (GKHPL) and Gruha Kalyan (GK) the proprietorship firm, as the CD has formed both the entities with wilful intention of frauding home buyers etc.
2. Briefs facts of the case, which are relevant to the issue in question, are as follows:



- (1) The Corporate Debtor had entered into agreements with home buyers in the name of GKHPL and GK. It started off entering into agreements initially in the name of GK in 2015 and post 2016 in the name of GKPHL. The fact that the Registered Address of both GK and GKPHL is the same. The first page of the gazette notification of the Revenue Department which has attached the properties of the CD in the name of GK and at the same time referred to the CD as GKHPL. The Sole Proprietor of GK, Mrs. Shataparni Majumdar, was also the Director of the GKHPL, as per the details from Zauba Corp.
- (2) On commencement of CIRP, the applicant has written to Banks of the CD even in the name of GK that the Corporate Veil created by the CD is to perpetuate fraud. Axis Bank has rejected his request vide its letter dated 17.02.2020, to change authorized signatory for the accounts maintained in the name of Gruha kalayan Proprietary, as it is different entity as per their records and documents. And the Order passed by NCLT is only in respect of *Gruha Kalyan Housing Projects Pvt Ltd only*
3. Heard Mr. Shankar.B.Iyer, the Applicant in person, **through Video Conference**. We have carefully perused the pleadings of the Party and the extant provisions of the Code, and the Rules made there under.
4. The Revenue Department has already initiated necessary action in respect of Financial Establishments with M/s Dreamz Infra India Pvt Ltd, M/s Gruha Kalyan Pvt Ltd, M/s TGS Constructions Pvt Ltd and other allied Companies/entities involved in the fraudulent transactions, vide notification No. RD 17 GRC 2017, (P-2) Bengaluru, Dated 20.06.2019. The property secured by all these entities and other Companies have already been attached and they are vest with the Government Authority. There is nothing wrong with stand of Axis Bank, and the Applicant failed to make out any prima facie case so as to entertain the instant Application, and thus it is liable to be rejected. The Applicant, instead of discharging his statutory duties, is



expanding the scope of CIRP with irrelevant and baseless Applications.

5. For the above said reasons and circumstances of the case, we are of considered opinion that the Applicant failed to make out even prima facie in order to entertain instant Company Petition, and thus it is liable to be rejected.
6. In the result, **I.A No. 247 of 2020** in CP (IB) No. 92/BB/2018 is hereby rejected. No orders as to cost.



**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**



**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**

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

I.A.No.219 of 2020 in
C.P (IB)No.92/BB/2018
U/s. 34 (1) of the IBC, 2016

In the matter of:

Mr. Shankar B.Iyer
Resolution Professional
Of M/s. Gruha Kalyan Projects Pvt. Ltd
C203, Shriram Samruddhi,
Varthur Main Road, Kundanahalli Gate,
Bengaluru – 560 066

- Applicant/
Resolution Professional

Date of Order: 9th September, 2020

- Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present:

For the Applicant : Shri Shankar B. Iyer

ORDER

Per: Rajeswara Rao Vittanala, Member (J)

1. I.A.No.219/2020 in C.P.(IB)No.92/BB/2018 is filed by Mr. Shankar B Iyer (Applicant/Resolution Professional) U/s. 34 (1) of the IBC, 2016 R/w Rule 11 of the NCLT Rules, 2016, by inter-alia seeking to appoint him as a Liquidator to complete the Liquidation process for the Corporate Debtor.
2. Brief facts of the case, which are relevant to the issue, in question, as follows:


Page 1 of 4

- (1) Initially, M/s. P. Pradeep Kumar & others (Petitioner) has filed C.P. (IB)No.92/BB/2018, U/s. 7 of IBC, 2016, R/w Rule 4 of I&B (AAA) Rules, 2016, by inter-alia, seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Gruha Kalyan Housing Private Limited (Respondent/Corporate Debtor) on the ground that it has committed default for an amount of Rs.43.65,000./-. Accordingly, the case was admitted by this Adjudicating Authority, vide Order dated 27.06.2020 by initiating CIRP in respect of the Corporate Debtor, appointing IRP imposing moratorium etc.
- (2) The Adjudicating Authority vide order dated 20.03.2020 passed in I.A. No. 157 of 220 has *inter-alia* directed to liquidate the Corporate Debtor U/s 33 of the Code, with further direction to the Committee of Creditors to appoint a Liquidator. Accordingly, 4th COC meeting was held on 15th May 2020, has unanimously decided to appoint the Applicant Liquidator. Hence the application.
3. Heard Shri Shankar.B.Iyer, the Applicant, **through Video Conference**. We have carefully perused the pleadings of Party and extant provisions of the Code and Rules made thereunder.
4. As narrated supra, the Committee of Creditors has suggested and approved to appoint the Applicant/RP as the Liquidator of the Corporate Debtor. Accordingly, he has also filed a written consent by way of Affidavit dated 26.05.2020 to act as Liquidator of the Corporate Debtor i.e. M/s. Gruha Kalyana Housing Projects Private Limited U/s. 34 (1) of the IBC, 2016, by inter alia declaring that he is registered with the Board as an Insolvency Professional having registration No. IBBI/IPA-002/IP-N00615/2018-19/11850; he is currently serving as

Resolution Professional in CP (IB) No. 322/BB/2019 of Rajendra. P, and M/s. Indira Nagar Chit Fund and Trading Co., and continuing as RP in present case CP (IB) No. 92/BB/2018 till the appointment of the Liquidator; there is no disciplinary proceedings pending against him with the Board or ICSI IIP;. The instant Application is filed in accordance with law and the Applicant prima facie eligible to be appointed as Liquidator for the Corporate Debtor. Therefore, we are inclined to dispose of the instant Application with directions as mentioned below.

5. In the result **I.A.No.219/2020** in C.P (IB) No.92/BB/2018 is hereby disposed of with following directions:
1. We hereby appoint Shankar B Iyer, IP, bearing Reg. No. IBBI/IPA-002/IP-N00615/2018-19/11850 as Liquidator for the Corporate Debtor, subject to the terms and conditions to be agreed upon by the parties in the light of the extant provisions of the IBBI.
 2. We hereby directed the Liquidator to issue immediate public announcement in Form B of Schedule II, within five days from date of his appointment stating that the Corporate Debtor is in liquidation.
 3. The liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made there under framed by the IBBI from time to time, wherein, he has *inter-alia* to submit Preliminary Report to Adjudicating Authority within 75 days from the date of liquidation Commencement date.
 4. He is further directed take steps for early dissolution of Corporate Debtor, in terms of Rule 14 of IBBI (Liquidation Process) Regulations;

5. The Registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action and also to said Liquidator
6. Post the case on 09th November, 2020 for report of Liquidator.



(ASHUTOSH CHANDRA)
MEMBER, TECHNICAL



(RAJESWARA RAO VITTANALA)
MEMBER, JUDICIAL

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