

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH II, CHENNAI

IA(I.B.C)/1245{CHE)/2020

CP(IB)JB89(CHE)/ 2019

*(Application filed under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016)*

In the matter of *M/s. Sheltrex Developers Pvt. Ltd.*

Mr. N. Kumar
Resolution Professional,
M/s. Sheltrex Developers Pvt. Ltd.
Address: Old No. 8, New No. 3, 3rd
Street, Race View Colony, Guindy,
Chennai — 600 032

...Applicant/Resolution Professional

Vs.

M/s. Tata Capital Housing Finance Ltd.
(Dissenting Financial Creditor)

Order Pronounced on 25th April, 2022

coRAu

Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant

Avinash Krishnan Ravi,
Serin Asher Sojan,
Vikram Veerasamy, Advocates

For Dissenting Financial Creditor: Abitha Banu, Advocate

O R D E R

Per: Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)

Under consideration is an Application filed under Section 60(5)
of the Insolvency and Bankruptcy Code, 2016 (hereinafter

the “IBC, 2016”) filed by the Resolution Professional for M/s.

Sheltrex Developers Pvt. Ltd (hereinafter the "Corporate Debtor")

seeking the following reliefs:

a) Permit the Applicant herein to constitute Project-based Committee of Creditors, for the purpose of conducting reverse corporate insolvency resolution process, as mandated by the Hon'ble NCLAT in Flat Buyers Association vs. Umang Realtech Pvt. Ltd., MANU/NL/0077/2020,

b) Permit the Applicant hereinto issue separate Expression of interest for each project under control of the Corporate Debtor and to consequently write and place before the respective Committee of Creditors, Resolution Plans for each project under control of the Corporate Debtor,

c) Pass such other order as this Hon'ble Tribunal may, in the facts and circumstances of this case, deem fit and thus render justice.

J. It is averred in the Application that the Company was ordered into Corporate Insolvency Resolution Process (CIRP) on 10th December, 2019. The Applicant herein was appointed as the Interim Resolution Professional and subsequently the Resolution Professional.

4. The Applicant herein submits that, in furtherance to the public notice intimating the commencement of the CIRP, he had received claims and the same has been duly collated. As quite a number of creditors are home buyers, the Applicant herein had sought appointment of an authorised representative for which, an application was made before this Adjudicating Authority and the same has been allowed.



5. It is further submitted by the Applicant that, the Corporate Debtor manages two projects namely Appur Village Oragadam Chennai which consists of a total of 296 homes, comprised in 4 towers. A total of 82 homebuyers have filed their claims. In addition to homebuyers, Religare Fininvest Limited (a financial creditor) has also filed its claim. The second project is Nammavedu at Coimbatore which consists of 18 acres of land under Joint Development Agreement out of which, a total of 110 homes is proposed in 1 acre of land, the remaining land is vacant and subject to a Joint Development Agreement with the landowners. A total of 26 homebuyers have filed their claims and Tata Capital Housing Finance Limited, a financial creditor has also filed its claim.

6. The Applicant submits that, the Corporate Debtor herein, is a real estate company whose only business is promoting real estate projects and in particular affordable housing. The Corporate Debtor currently manages two projects, each of which have a separate set of creditors who are not related to one another. The Applicant further states that, with respect to real estate companies and CIRP for such companies, the Hon'ble NCLAT, vide its order dated 04.02.2020 in *Flat Buyers Association V's. Mangalore Real Estate Pvt. Ltd.* MANU/NL/OOZZ/2020 has observed as follows:

"21. In Corporate insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial Institutions/ Banks (Operational Creditors) or Operational Creditors of one project initiated Corporate insolvency

Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate companies (Corporate Debtor) in other places where separate plan(s) are approved by different authorities, land and its owner may be different and mainly the allottees (financial creditors) financial institutions (financial creditors, operational creditors are different for such separate projects. therefore, all the assets of company (Corporate Debtor) are not to be maximised, the assets of the company (Corporate Debtor- real estate) of that particular project is to be maximised for balancing the creditors such as allottees, financial institutions and operational creditors of that particular project. Corporate insolvency Resolution Process should be project basis, as per approved plan by the Competent Authority. Any other allottees (financial creditors) or financial institutions/ banks other financial creditors) or operational creditors of other project cannot file a claim before the Interim Resolution Professional of other project and such claim cannot be entertained.

So, we hold that, Corporate Insolvency Resolution Process against a real estate company (Corporate Debtor) is limited to a project as per approved plan by the Competent Authority and not other projects which are separate at other places for which separate plans are approved for example in this case the "Winter Hill 77 Gurgaon Project of the Corporate Debtor" has been placed of Corporate Insolvency Resolution Process if the same real estate company (Corporate Debtor herein) has any other project in another town such as Delhi or Kerala or Mumbai, they cannot be clubbed together nor the assets of the Corporate Debtor (Company) for such other projects can be maximised.

7. Furthermore, the Applicant relies on the judgements of Hon'ble NCLAT in *Rajesh Goyal Vs. Babita Gupta* MANU/NL/OJ 18/3020 and *Bijay Pratap Singh Vs Unimax Inf:emotional*, MANU/NL/O269/2020 through which, the Applicant states that, if a Corporate Debtor has two projects, each project: has to be treated as a separate entity under reverse insolvency resolution process mechanism and consequently, the

creditors should be classified and allocated into each project, based on their contribution/ involvement in the said project.

8. It is seen from the records that, on 27.10.2021, Counsel for the Dissenting Financial Creditor has submitted their objections. A brief of the same is as follows:

8.1 It is submitted that, the Dissenting Financial Creditor viz., M/s. Tata Capital Housing Financing Limited holds 17% of voting right in CoC.

8.2 It is submitted by the Dissenting Financial Creditor that this Application filed by the Applicant/Resolution Professional is not maintainable as neither the IBC, 2016 nor the Regulations stipulate project wise splitting of the company.

8.3 It is further submitted by the Dissenting Financial Creditor that, as per Section 25(2)(h) of the Insolvency and Bankruptcy Code, the Resolution Professional shall invite prospective Resolution Applicants with the specified criteria as approved by CoC to submit a Resolution Plan.

8.4 Furthermore, the Dissenting Financial Creditor submits that as per Regulation 38(2)(b) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 the Resolution Plan shall provide the following:



- a. Term of the plan and its implementation schedule.
- b. The management and control of the business of Corporate Debtor during its term and
- c. Adequate means for supervising its implementation.

The Dissenting Financial Creditor submits that from the above given regulations, it is apparent that, the plan submitted by the Resolution applicant will be in respect of the entire business of the Corporate Debtor and not project wise.

8.5 The Dissenting Financial Creditor further submits that, as per Regulation 39 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a prospective Resolution Applicant may submit Resolution Plan in accordance with the Code and Regulations. In such circumstances, the claim of the Resolution Professional that he will invite Expression of Interest project wise is not feasible as the same is against the provisions of the Code. Consequently, the same cannot be approved by the CoC.

8.6 Furthermore, the Dissenting Financial Creditor has submitted that the decisions relied on by the Applicant are not applicable in the present case.

9. Heard the Learned Counsel for the Applicant and taking into account the facts of the present case, as well as the documents submitted by both the Applicant as well as the Dissenting Financial Creditor viz., M/s. Tata Capital Housing Finance Ltd. On a thorough

reading of the IBC, 2016 read alongwith the regulations made thereunder envisages the insolvency of the Corporate Debtor and it can be seen that there is no concept of limited CIRP or CIRP for specific projects anywhere.

It can be further seen in the Hon'ble Supreme Court judgement in *Pioneer Urban Land and Infrastructure Ltd Vs. Union Of India* [2015] 10 SCC 625, that the IBC, 2016 is a beneficial legislation which can be triggered to put the Corporate Debtor back on its feet in the interest of unsecured creditors like allottees, so that a replaced management may carry out the real estate project as originally envisaged and deliver the flat/apartment as soon as possible or pay late fees for late delivery.

As far as the case laws relied on by the Applicant is concerned, this Adjudicating Authority is of the view that, the mechanism adopted by the Hon'ble NCLAT is too peculiar to the facts and circumstances of the Winter Hills judgement and cannot be used as a precedent in the present scenario. Moreover, in the present case, as no promoters have put forward any funds to avoid CIRP, the process of project: —wise CIRP cannot be followed here as how it was followed in the Winter Hills judgement and the decision in *Rajesh Goyal*,

10. "herefore, since the reliefs sought by the Applicant are well outside the purview of the IBC, 2016 and the relevant regulations,

and by reason that the view taken by Hon'ble NCLAT in the decisions as relied on by the Applicant does not apply in the present case, this Application is not maintainable and is liable to be dismissed.

Accordingly, this IA viz., IA(IBC)/1245(CHE)/2020 stands dismissed; however without cost.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)



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