

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
[Through Physical Hearing / VC Mode (Hybrid)]

ITEM No. 09
IA Nos.389, 510, 544/2022, 45, 55,
96, 426/2023, Contempt Petition 01/2023,
IA Nos.801/2023, 19, 34, 35, 36, 37/2024 in
CP (IB) No.84/BB/2019

IN THE MATTER OF:

Mr. Pratap Chandra Padhy & Ors. ... Petitioners
Vs.
M/s. Dreamz Infra India Ltd. ... Respondent

Order under Section 7 of Insolvency & Bankruptcy Code, 2016

Order delivered on: 14.02.2024

CORAM:

SHRI K. BISWAL
HON'BLE MEMBER (JUDICIAL)

SHRI MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For IA 510/2022 : Shri Saravana P., Adv. for Applicant
For IAs 34 to 37/2024 : Shri Harshad Joshi, Adv. for Applicant
For the RP : Ms. Lakshmi Menon, Adv.
The Erstwhile RP : Shri Ashok Kriplani

ORDER

IA Nos.34, 35, 36 and 37 of 2024:

1. Heard the Ld. Counsel for the Applicant-Homebuyers.
2. Ld. Counsel for the Applicant in IA Nos.34, 35, 36 and 37 of 2024 submits that he has filed these applications under Section 60(5) of the IBC, 2016 seeking to implead in IA Nos.544/2022, 96/2023, 389/2022 and 426/2022 respectively. He further stated that the Homebuyers had meeting with the Resolution Professional and it has been decided to obtain a Feasibility Report regarding the construction of Flats on the Land and seeks time up to April

2024 to intimate the further progress in the matter, and also stated that he has served copy of all these applications on the RP. Pursuant to order dated 22.11.2023, Ld. Counsel for the Applicant has filed brief notes in all these applications *vide* Diary dt.31.01.2024 and 09.02.2024. The same are taken on record. Ld. Counsel for the Respondents are granted two weeks' time to file reply, and one week thereafter is granted to the Applicant to file rejoinder, if any, after duly serving the copy on the other side.

3. List the matter on 17.04.2024.

IA No.55 of 2023:

1. Heard the Ld. Counsel for the RP.
2. Ld. Counsel for the RP submits that she has filed Memo *vide* Diary No. 3532 dated 04.07.2023 seeking to adopt the objections filed by them in IA No.544 of 2022 in the present matter. In compliance to order dated 07.08.2023, Ld. Counsel for the R-1 has filed written submissions *vide* Diary No.4198 dated 09.08.2023. The same are taken on record.
3. List the matter on **17.04.2024** along with other IAs.

IA No.510 of 2022:

1. This application has been filed by EPFO, Regional Office-Bengaluru u/s 60(5) (c) of the Code r/w Rule 11 of the NCLT Rules, 2016 seeking a direction to the Respondent-RP to pay statutory PF dues sum of Rs.2,06,63,456/- as on 28.10.2022 to EPFO Department claims as per Section 36(4)(a)(iii) r/w S.60(5) and to release the payment on priority over the other debts upholding Sec.11 of EPF & MP Act, 1952.
2. Heard the Ld. Counsels for the Parties.
3. Ld. Counsel for the Applicant submits that they have submitted a claim before the Resolution Professional for PF & allied dues of EPF & MP Act, 1952 in respect of the Corporate Debtor *vide* letter dated 17.02.2022. However, the RP has not responded to the same. The Applicant *inter alia* stated that it is well settled position in law that no provisions of the EPF & MP Act, 1952 is overriding the provisions of the I&B Code, 2016, as the provident fund dues ought to be treated as third party assets (not as debts) and they fall outside

the liquidation estate of an establishment. Further, the general non-obstante clause contained u/s 53 or 238 of the Code will not override the specific non-obstante clause contained u/s 11(2) of the EPF & MP Act, 1952.

4. The Respondent-RP filed his objections *vide* Diary No.995 dated 20.02.2023 wherein it is *inter alia* stated that the RP does not have any resources to pay the Applicant herein at this stage, even though they are statutory dues, other than from his own funds, and in the event the present application is allowed, then the Applicant herein may submit the costs incurred by him during the CIRP to the Liquidator, who may then verify and approve the same accordance with provisions of the Code and Liquidation regulations, if such costs deserve to be approved. He further contended that the Applicant's prayers deserves to be rejected, as they do not hold any water, especially considering that there was no resolution plan nor contributions received from any Financial Creditors nor was interim finance raised, and as such, there are no funds available in the Corporate Debtor (Sumadhur Project) to pay any expenses allegedly incurred by the Applicant and his service providers herein. Thus, in light of the above the application being premature, the same deserves to be dismissed, as the prayers are not tenable in law nor in fact. He further stated that he has filed an application u/s 33(1)(a) of the Code seeking liquidation of the Corporate Debtor.
5. Considering the above and for the reasons stated in the Application, the Respondent-RP is hereby directed to consider the claim of the Applicant herein in accordance with the Code and the Regulations made thereunder, at the appropriate time of Resolution Plan or Liquidation of the Corporate Debtor, as the case may be.
6. Accordingly, **IA No.510 of 2022 stands disposed of.**

Sd/-
MANOJ KUMAR DUBEY
MEMBER (TECHNICAL)

Krishna

Sd/-
K. BISWAL
MEMBER (JUDICIAL)