

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 21.03.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP No. 9/9/AMR/2022		9 of IBC	Baisetty Ajaykumar Vs. Apex Meadows Private Limited

Counsel for Petitioner(s):

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Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

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Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

CP No. 9/9/AMR/2022 is admitted, vide separate orders.

7/10/22
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT HYDERABAD**

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CP (IB) No. 9/9/AMR/2022

**In the matter of a Petition under Section 9 of the Insolvency and
Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and
Bankruptcy (Application to Adjudicating Authority) Rules, 2016
AND**

**In the matter of
M/s. APEX MEADOWS PRIVATE LIMITED**

Between:

Mr. Baisetty Ajay Kumar,
S/o. Late B. Subba Rao, Aged about 53 years,
R/o. Flat No. 2, D.No. 49-54-16/3, 4th floor,
Madhuri Residency Apartments,
Balayya Sastry Layout, Vishakhapatnam,
Andhra Pradesh – 530013.

... Operational Creditor

AND

M/s. Apex Meadows Private Limited,
S.No. 104/2, Opp. S.B.T. Hotel, N.H. 16,
Gajuwaka, Visakhapatnam,
Andhra Pradesh - 530026.

... Corporate Debtor

Date of Order: 21.03.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor : Mr. D. Narendar Naik, Advocate.

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ORDER

1. This Petition is filed by Mr. Baisetty Ajay Kumar, (“hereinafter referred to as Operational Creditor”) seeking initiation of Corporate Insolvency Resolution Process in respect of M/s. Apex Meadows Private Limited (“hereinafter referred to as Corporate Debtor”) alleging that the Corporate Debtor committed default in making payment of Rs.26,80,31,333/- which includes interest @18% per annum, towards unpaid revenue shares arising out of the registered transactions of 140 sale deeds. Hence petition under Section 9 of Insolvency and Bankruptcy Code, 2016 (referred to as “Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process (CIRP), granting moratorium and appointment of Insolvency Resolution Professional (IRP) as prescribed under the Code and Rules thereon.

2. The facts briefly are as follows;
 - i. The learned Counsel for the Operational Creditor submits that the Operational Creditor is a reputed businessman and interalia engaged in the business of Real Estate and Construction. The Corporate Debtor is a Company incorporated under the provisions of Companies Act, 1956 and engaged in the business of Construction/Civil Works,

7/10/22

Real Estate activities, Development and sale of land and operation of apartments, hotels, and residential home sites. The Corporate Debtor is a private equity arm of SRS Private Investments. The Corporate Debtor appointed the Operational Creditor as an Executive Director and executed an Executive Director Agreement dated 08.02.2008, stating that the Operational Creditor has to serve as Executive Director for a term of 4 years. The SRS Investments/JM Financial made bad investments to a tune of Rs.600,00,00,000/- due to which their fund flow into the Corporate Debtor dried up, leading to a stagnation of the project. The Operational Creditor, in order to safeguard his interest, requested to execute a written agreement in respect of the revenue share which was originally promised to him for the services already rendered by him towards identification, conception, development of the Project. Accordingly, the Operational Creditor and Corporate Debtor entered into a Revenue Sharing Agreement dated 29.01.2009.

- ii. The revenue share entitlement of the Operational Creditor is on a 'per square feet' basis from out of the sale proceeds of the residential units in the Project as it clearly stated in the said Revenue Sharing Agreement that *"shall be made by the 21st of every month on the basis of actual advance sales collection in the previous month. In case of delay in payment*

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the Company shall pay interest @ 18% from the delay period.” The Operational Creditor worked tirelessly for the Corporate Debtor and he successfully completed his 4 years tenure as the Executive Director as per the terms in the Executive Director Agreement.

- iii. The revenue share of the Operational Creditor is payable to him from out of the advances received by the Corporate Debtor pursuant to the sale of residential units, the Operational Creditor started tracking the transactions being made by the Corporate Debtor in respect of residential units sale in the Project. As on 21.12.2021 more than 200 transactions were registered without transferring the share of the Operational Creditor as per the Revenue Sharing Agreement. The Corporate Debtor sold carpet area of 1,36,978 sq. ft. in the project out of which, the Operational Creditor is entitled for Rs.26,80,31,333/- including interest @ 18% p.a. The Corporate Debtor did not pay amount due to the Operational Creditor. The Operational Creditor issued a legal notice dated 20.08.2021 to the Corporate Debtor for repayment of the debt. The Corporate Debtor issued a reply notice dated 04.10.2021, with unsubstantiated excuses for avoiding payment. Thereby the Corporate Debtor committed default. On the basis of the above submissions, the learned counsel appearing for the Operational Creditor seeks this Tribunal to admit the Company Petition.

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3. The Operational Creditor issued notice to the Corporate Debtor by informing the next date of hearing. But the notice sent to the Corporate Debtor is refused and none appeared for the Corporate Debtor. Hence, heard the Counsel for the Operational Creditor.

Though in the reply notice, the Corporate Debtor took a stand that the Operational Creditor failed to perform his duties as prescribed under the agreements and that the term of 4 years elapsed as per contract dated 31.12.2011 and was not renewed and that the project did not materialise during the term in question, no evidence in that regard is produced and the Corporate Debtor did not choose to appear and contest the case and prove the contentions made in the reply notice. Whereas, by virtue of the documents filed by the Operational Creditor his case stand proved prima facie. Since his case is non-controverted, it has to be accepted as true.

4. I am of the considered view that it is a fit case to admit and order initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Operational Creditor did not suggest any name as Insolvency Resolution Professional (IRP) and sought the Tribunal to appoint an IRP. Hence, **Mr. Immaneni Eswara Rao**, (Registration No. IBBI/IPA-001/IP-P01224/2018-2019/11943) as Insolvency Resolution Professional (IRP).

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ORDER

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

- i. **Mr. Immaneni Eswara Rao**, (Registration No. IBBI/IPA-001/IP-P01224/2018-2019/11943), having office at 40-26-22 , Mohiddin Street Opp. BSNL Exchange, Labbipeta, MG Road Vijayawada, Krishna, Andhra Pradesh-520010; e-mail: **ier_ca@outlook.com**; Mobile: 9248123333 is appointed as the Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.
- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.

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- v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.
- vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

Law

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

Swamy Naidu