



Reserved on : 15.02.2024

Pronounced on : 06.03.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF MARCH, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.26977 OF 2023 (GM - RES)

C/W

WRIT PETITION No.27032 OF 2023 (GM - RES)

WRIT PETITION No.27346 OF 2023 (GM - RES)

IN WRIT PETITION No.26977 OF 2023

BETWEEN:

M/S. MANYATA REALTY
A PARTNERSHIP FIRM REGISTERED
UNDER THE PARTNERSHIP ACT, 1932
HAVING ITS REGISTERED OFFICE AT:
NO.9/1, 1ST FLOOR, CLASSIC COURT
RICHMOND ROAD
BENGALURU – 560 001
REPRESENTED HEREIN BY ITS
MANAGING PARTNER
MR.REDDY VEERANNA.

... PETITIONER

(BY SRI. OM PRAKASH, SENIOR ADVOCATE A/W.,
SRI. C.K.NANDAKUMAR, SENIOR ADVOCATE FOR
SRI. VISHWAS N., ADVOCATE)

AND:

- 1 . THE REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
CORPORATE BHAWAN
12TH FLOOR, RAHEJA TOWERS
M.G.ROAD, BENGALURU – 560 001.
- 2 . BUOYANT TECHNOLOGY
CONSTELLATION PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT:
NO.41, VITTAL MALLYA ROAD
BENGALURU – 560 001
REPRESENTED HEREIN BY ITS DIRECTOR.
- 3 . UNION OF INDIA
MINISTRY OF CORPORATE AFFAIRS
B-1 WING, 2ND FLOOR
PARYAVARAN BHAWAN, CGO COMPLEX
LODHI ROAD, NEW DELHI – 110 003.

... RESPONDENTS

(BY SRI. H.SHANTHI BHUSHAN, DSGI A/W.,
SMT. ANUPAMA HEGDE, CGC FOR R1 AND R3;
SRI. M.S.SHYAM SUNDAR, SENIOR ADVOCATE A/W.,
SRI. ANISH ACHARYA, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) DIRECTION, DECLARING THE E-FILING OF A PETITION IN FILING NO. 2903111/01786/2023 BY THE SECOND RESPONDENT PURPORTED TO BE UNDER SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016, AS AGAINST A PARTNERSHIP FIRM AND ITS PARTNERS, AS VOID AB INITIO, ILLEGAL, NON-EST IN LAW AND LACKS JURISDICTION (ANNEXURE-A AND B) AND THE SAME AS NON-EXISTENT IN THE EYE OF LAW AND ETC.,

IN WRIT PETITION No.27032 OF 2023:

BETWEEN:

MR. REDDY VEERANNA
S/O MR.R.SANJEEVAPPA
AGED ABOUT 66 YEARS
R/AT NO.109, 10TH MAIN
7TH CROSS, R.M.V.EXTENSION
SADASHIVNAGAR
BENGALURU – 560 080.

... PETITIONER

(BY SRI. OM PRAKASH, SENIOR ADVOCATE A/W.,
SRI. C.K.NANDAKUMAR, SENIOR ADVOCATE FOR
SRI. VISHWAS N., ADVOCATE)

AND:

- 1 . THE REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
CORPORATE BHAWAN
12TH FLOOR, RAHEJA TOWERS
M.G.ROAD, BENGALURU – 560 001.
- 2 . BUOYANT TECHNOLOGY
CONSTELLATION PRIVATE LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT:
NO.41, VITTAL MALLYA ROAD
BENGALURU – 560 001
REPRESENTED HEREIN BY ITS DIRECTOR
- 3 . UNION OF INDIA
MINISTRY OF CORPORATE AFFAIRS
B-1 WING, 2ND FLOOR

PARYAVARAN BHAWAN
CGO COMPLEX, LODHI ROAD
NEW DELHI – 110 003.

... RESPONDENTS

(BY SRI. H.SHANTHI BHUSHAN, DSGI A/W.,
SMT. ANUPAMA HEGDE, CGC FOR R1 AND R3
SRI. M.S.SHYAM SUNDAR, SENIOR ADVOCATE A/W.,
SRI. ANISH ACHARYA, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTION THE E-FILING OF A PETITION IN FILING NO. 2903111/01786/2023 BY THE SECOND RESPONDENT PURPORTED TO BE UNDER SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016, AS AGAINST A PARTNERSHIP FIRM AND ITS PARTNERS, INCLUDING THE PETITIONER AS VOID AB INITIO, ILLEGAL, NON-EST IN LAW AND LACK OF JURISDICTION (ANNEXURE-A AND B) AND THE SAME AS NON EXISTENT IN THE EYE OF LAW AND ETC.,

IN WRIT PETITION No.27346 OF 2023:

BETWEEN:

MR. TEJRAJ GULECHA
S/O MR. PUKHRAJ GULECHA
AGED ABOUT 67 YEARS
R/AT NO.40A, CLASSIC ORCHIDS
BANNERGHATTA ROAD
BEHIND MEENAKSHI TEMPLE
BENGALURU – 76.

... PETITIONER

(BY SRI. OM PRAKASH, SENIOR ADVOCATE A/W.,
SRI. C.K.NANDAKUMAR, SENIOR ADVOCATE FOR
SRI. VISHWAS N., ADVOCATE)

AND:

- 1 . THE REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
CORPORATE BHAWAN
12TH FLOOR, RAHEJA TOWERS
M.G.ROAD, BENGALURU – 560 001.
- 2 . BUOYANT TECHNOLOGY
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A COMPANY REGISTERED UNDER
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REPRESENTED HEREIN BY ITS DIRECTOR.
- 3 . UNION OF INDIA
MINISTRY OF CORPORATE AFFAIRS
B-1 WING, 2ND FLOOR
PARYAVARAN BHAWAN, CGO COMPLEX
LODHI ROAD, NEW DELHI – 110 003.

... RESPONDENTS

(BY SRI. H.SHANTHI BHUSHAN, DSGI A/W.,
SMT. ANUPAMA HEGDE, CGC FOR R1 AND R3;
SRI. S.BASAVARAJ, SENIOR ADVOCATE A/W.,
SRI. ANISH ACHARYA, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO A) DECLARING THE E-FILING OF A PETITION IN FILING NO.2903111/01786/2023 BY THE SECOND RESPONDENT PURPORTED TO BE UNDER SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016, AS AGAINST A PARTNERSHIP FIRM AND ITS PARTNERS, INCLUDING THE PETITION AS VOID AB INITIO, ILLEGAL, NON-EST IN LAW AND

LACK OF JURISDICTION (ANNEXURE-A AND B) AND THE SAME AS NON EXISTENT IN THE EYE OF LAW AND ETC.,

THESE WRIT PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 15.02.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner in W.P.No.26977 of 2023 is a firm - M/s Manyata Reality ('the firm' for short). Petitioners in W.P. No.27032 of 2023 and 27346 of 2023 are the Directors of the said firm. The common stream of challenge in all these petitions is filing of petition before the National Company Law Tribunal ('the Tribunal' for short) invoking Section 95 of the Insolvency and Bankruptcy Code ('the Code' for short).

2. Heard Sri C.K. Nandakumar and Sri Om Prakash, learned senior counsel appearing for the petitioners, Sri M.S. Shanthi Bhushan, learned Deputy Solicitor General of India appearing for respondent No.1 and Sri M.S. Shyam Sundar, learned senior counsel appearing for respondent No.2.

3. The petitioner/firm is a developer/Infrastructure Development business hub. On 23-12-2009 the firm enters into a memorandum of understanding between the land owners of certain properties with the 2nd respondent. The 2nd respondent is Buoyant Technology Constellation Private Limited (hereinafter referred to as 'the Company' for short). Between 2010 and 2015 the respondent/Company appears to have entered into distinct Joint Development Agreements on various dates for implementing the joint development of lands as contemplated under the memorandum of understanding. The dispute arose between the two. The petitioner and Manyata Infrastructure Development, a private entity issues a notice to the respondent/Company regarding termination of Joint Development Agreement, quantifying damages and calling upon the 2nd respondent to pay such damages, in view of the breach of agreement by the respondent/Company and the resultant losses suffered by the petitioners. The petitioner/firm then issues a notice for arbitration to the respondent/Company on 10.10.2022. On 17-10-2022 the respondent/Company replies nominating its Arbitrator for the purpose of arbitration. On 05-12-2022 the petitioner/firm files a claim before the Arbitral

Tribunal and on 25-01-2023 the respondent/Company files its counter claim for repayment of the loan with interest in terms of a particular loan agreement of the year 2012. Objections to the counter claim and rejoinder to the objections were all filed before the Arbitral Tribunal.

4. When things stood thus, the respondent/Company causes a legal notice under Section 95 of the Code demanding the petitioner/firm and its partners for payment of huge sums of money against the alleged loan account. The petitioner/firm and its partners reply to the said notice denying all claims made by the respondent/Company, in the notice issued invoking Section 95 of the Code. These are put forth before this Court in Writ Petition No.16886 of 2023 by the respondent/Company which comes to be withdrawn. It is later, the respondent/ Company serves copy of the petition filed before the Tribunal under Section 95 of the Code depicting a particular filing number before the Tribunal. The respondent/Company on the ground that it has preferred a petition before the Tribunal files a memo before the Arbitral Tribunal seeking adjournment of arbitration proceedings *sine die*. In the

light of filing of petition before the Tribunal, the petitioners are knocking at the doors of this Court in these petitions.

5. The learned senior counsel Sri C.K. Nanda Kumar and Sri Om Prakash representing the petitioners would in unison submit that the Code does not relate to insolvency resolution of individuals and partnership firms. The jurisdiction for the respondent/Company is to approach the Debts Recovery Tribunal or Debts Recovery Appellate Tribunal. Since no insolvency resolution of individuals and partnership firms are brought under the ambit of the Code the only exception that the Code projects is that personal guarantor to corporate debtor only can be brought under Section 90 of the Code and thereby conferring jurisdiction upon the Tribunal. Since the petitioners, the Directors in the other two petitions are not personal guarantors of the corporate debtor nor the petitioner/firm a corporate debtor cannot be brought under the Code and consequently the petition filed under Section 95 of the Code is de hors jurisdiction and, therefore, would submit that the petition be allowed and arbitration proceedings be permitted to continue.

6. Per contra, both the learned senior counsel representing the respondent/Company would again in unison contend that though the petitioners are not personal guarantors by name, by their conduct and assurances given to them in the memorandum of understanding they step into the shoes of personal guarantor and, therefore, the petition before the Tribunal would be maintainable is the submission of the learned senior counsel Sri S. Basavaraj. The learned senior counsel Sri M.S. Shyam Sundar would contend that the petition filed is only at the scrutiny stage and no prejudice would be caused if it is to be decided by the Tribunal whether it has jurisdiction to entertain the petition or not. Therefore, the petition preferred before this Court is wholly premature.

7. The learned senior counsel for the petitioners would join issue to contend that there can be no adjudication of a particular authority deciding its own jurisdiction. The rigour of Section 95 is, the moment petition is filed and numbered before the Tribunal a Resolution Professional is appointed. It is deemed appointment on registration of the petition before the Tribunal. Therefore, the petitioners will be called upon by the Resolution Professional to

place all the documents on record. If the Tribunal has no jurisdiction even, it is the submission why should partnership firm go before the Tribunal and submit to its jurisdiction. They would seek quashment of proceedings.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record. In furtherance whereof, the only issue that falls for consideration is,

"Whether a petition against a partnership firm or its Directors is fileable and maintainable under Section 95 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal?"

9. The afore-narrated facts are a matter of record. The link in the chain of events is as narrated hereinabove are all again a matter of record. It is not in dispute that the petitioners in one of the petitions is a partnership firm and the petitioners in the companion petitions are the directors of the said firm. The respondent/Company and the petitioner-firm generate certain

disputes between them. Those disputes are being arbitrated before an Arbitral Tribunal. It is a matter of record, as observed hereinabove, that the proceedings are proceeding before the Arbitral Tribunal. During the subsistence of those proceedings, the respondent/Company file/register a petition before the Tribunal invoking Section 95 of the Code. The issue is, whether it would be maintainable against the petitioners. Alleging that the Tribunal has no jurisdiction even to register a petition under Section 95 of the Code against the petitioners, they are at the doors of this Court.

10. To consider the issue whether registration of a petition under Section 95 of the Code before the Tribunal would be maintainable against the petitioners and the like – partnership firm and the directors of the firm, it becomes necessary to notice certain provisions of the Code. Section 3 of the Code deals with definitions. Section 3(7) reads as follows:

"(7) "corporate person" means a company as defined in clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of Section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability

under any law for the time being in force but shall not include any financial service provider;"

Section 3(8) reads as follows:

" (8) "corporate debtor" means a corporate person who owes a debt to any person;"

Section 3(7) defines who is a corporate person. A corporate person, under the Code, is the one defined under clause 20 of Section 2 of the Companies Act, 2013. Corporate debtor would mean, a corporate person who owes a debt to any person. Therefore, a corporate person must owe a debt to any person and the said corporate person would mean a Company as defined under clause 20 of Section 2 of the Companies Act, 2013. The Code nowhere brings in a partnership firm or directors who are individuals of the said partnership firm under the ambit of the Code.

11. Part III of the Code deals with 'Insolvency resolution and bankruptcy for individuals and partnership firms'. For partnership firms and individuals the Adjudicating Authority is the Debts Recovery Tribunal and the Appellate Authority is the Debts Recovery Appellate Tribunal. Part III runs from Section 78 to

Section 187 in the Code. Therefore, the entire part deals with insolvency resolution and bankruptcy for individuals and partnership firms. The petitioners in one of the petitions is a partnership firm and the other are individuals i.e., the Directors of the partnership firm. The jurisdiction against the said firm or individuals is clearly before the Debts Recovery Tribunal.

12. Certain amendments are brought in by the Government of India to the Code in terms of a notification dated 15-11-2019. The notification reads as follows:

"THE GAZETTE OF INDIA: EXTRAORDINARY [PART-II-SEC.3(ii)]

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 15th November, 2019

S.O. 4126(E). - *In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby appoints the 1st day of December, 2019 as the date on which the following provisions of the said Code **only in so far as they relate to personal guarantors to corporate debtors, shall come into force:-***

- (1) clause (e) of section 2;*
- (2) section 78 (except with regard to fresh start process) and section 79;*

(3) sections 94 to 187 [both inclusive];

- (4) *clause (g) to clause (i) of sub-section (2) of section 239;*
- (5) *clause (m) to clause (zc) of sub-section (2) of section 239;*
- (6) *clause (zn) to clause (zs) of sub-section (2) of section 240; and*
- (7) *section 249.*

*[F. No. 30/21/2018-Insolvency Section]
GYANESHWAR KUMAR SINGH, Jt. Secy."*

(Emphasis supplied)

The notification, for the first time, draws in a personal guarantor to a corporate debtor to come under the ambit of the Code *qua* the provisions in the notification. The amendment runs through Section 2 to Section 249 of the Code. It becomes applicable to Section 94 to Section 187 as well *inter alia*. Therefore, the personal guarantor would come within the Code. This would mean an addition; addition would mean that, there is one more entity/individual that would come within the ambit of the Code apart from the Company who is described to be a corporate person. He or it is "personal guarantor" to the corporate debtor. It is only these which can come within the ambit of the Code.

13. A petition before the Tribunal can be filed invoking Section 95 of the Code by a creditor against a debtor, a corporate debtor. This was the tenor till 15-11-2019. The addition is, the personal guarantor to the corporate debtor, as observed hereinabove. Therefore, it becomes germane to notice Section 95 and the aftermath of registration of a petition under Section 95 of the Code before the Tribunal. The aftermath is found in Sections 96 and 97 of the Code. All the three run as follows:

"95. Application by creditor to initiate insolvency resolution process.—(1) *A creditor may apply either by himself, or jointly with other creditors, or through a resolution professional to the Adjudicating Authority for initiating an insolvency resolution process under this section by submitting an application.*

(2) *A creditor may apply under sub-section (1) in relation to any partnership debt owed to him for initiating an insolvency resolution process against—*

- (a) any one or more partners of the firm; or**
- (b) the firm.**

(3) *Where an application has been made against one partner in a firm, any other application against another partner in the same firm shall be presented in or transferred to the Adjudicating Authority in which the first mentioned application is pending for adjudication and such Adjudicating Authority may give such directions for consolidating the proceedings under the applications as it thinks just.*

(4) An application under sub-section (1) shall be accompanied with details and documents relating to—

- (a) the debts owed by the debtor to the creditor or creditors submitting the application for insolvency resolution process as on the date of application;*
- (b) the failure by the debtor to pay the debt within a period of fourteen days of the service of the notice of demand; and*
- (c) relevant evidence of such default or non-repayment of debt.*

(5) The creditor shall also provide a copy of the application made under sub-section (1) to the debtor.

(6) The application referred to in sub-section (1) shall be in such form and manner and accompanied by such fee as may be prescribed.

(7) The details and documents required to be submitted under sub-section (4) shall be such as may be specified."

(Emphasis supplied)

Section 95 deals with application by the creditor to initiate insolvency resolution process and when an application is filed under Section 94 or 95, Section 96 kicks in. Section 96 deals with interim moratorium. Section 96 reads as follows:

"96. Interim-moratorium.—*(1) When an application is filed under Section 94 or Section 95—*

(a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and

(b) during the interim-moratorium period—

(i) any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed; and

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim-moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

(Emphasis supplied)

So kicks in Section 97 of the Code. It reads as follows:

“97. Appointment of resolution professional.—(1) If the application under Section 94 or 95 is filed through a resolution professional, the Adjudicating Authority shall direct the Board within seven days of the date of the application to confirm that there are no disciplinary proceedings pending against resolution professional.

(2) The Board shall within seven days of receipt of directions under sub-section (1) communicate to the Adjudicating Authority in writing either—

- (a) *confirming the appointment of the resolution professional; or*
- (b) *rejecting the appointment of the resolution professional and nominating another resolution professional for the insolvency resolution process.*

(3) Where an application under Section 94 or 95 is filed by the debtor or the creditor himself, as the case may be, and not through the resolution professional, the Adjudicating Authority shall direct the Board, within seven days of the filing of such application, to nominate a resolution professional for the insolvency resolution process.

(4) The Board shall nominate a resolution professional within ten days of receiving the direction issued by the Adjudicating Authority under sub-section (3).

(5) The Adjudicating Authority shall by order appoint the resolution professional recommended under sub-section (2) or as nominated by the Board under sub-section (4).

(6) A resolution professional appointed by the Adjudicating Authority under sub-section (5) shall be provided a copy of the application for insolvency resolution process."

The effect of filing of a petition under Sections 94 or 95 of the Code is the immediate kicking in of Section 96 of the Code. Section 96 supra has some serious consequences. The moment a petition is filed under Section 95 of the Code, interim moratorium is axiomatic. Interim moratorium places any corporate debtor in a state of stillness, as found in 96(1)(b) of the Code. Section 96(2) of the

Code mandates that when an application is made under Section 95, it shall operate against all the partners of the firm as on the date of the application. Yet another axiomatic consequence of a petition being registered is, appointment of a Resolution Professional. The moment an application is filed, the proceedings are immediately placed before the Resolution Professional and he would commence his functions of summoning of documents to submit a report within 10 days of his appointment. These are the consequences of filing an application before the Tribunal. I would emphasize that it is a consequence of filing the application and not entertaining the application by the Tribunal. The Tribunal that is empowered to entertain in part III is the Debts Recovery Tribunal and not the 1st respondent Tribunal.

14. If it were to be a case of consideration of a jurisdiction, when an application is entertained by the Tribunal, it would have been an altogether a different circumstance. The Code is worded in such a way and hedged with such conditions that it leaves not play in the joints, once the petition is registered before the Tribunal. The statutory functions, its effect would immediately begin to flow.

15. Both the learned senior counsel appearing for the respondent/Company have strenuously contended that it is after all filing of the petition. The Tribunal will decide whether it has jurisdiction to entertain the petition or not. This Court, at the stage of scrutiny of an application, should not entertain the writ petition. If filing of the petition did not result in any dire consequence this Court would have left it at that, and directed the Tribunal to decide the jurisdiction and proceed further. That is not the purport of the Code, as the petitioners and the like do not come within the ambit of the Code. If they do not come within the ambit of the Code, it touches upon the jurisdiction, to even file a petition, under Section 95 of the Code, by any creditor against a debtor and if it is a question of jurisdiction, the answer to such question is always either a **"yes"**, or a **"no"**, it can never be a **"may be"**.

16. Learned senior counsel Sri. M. S. Shyamsundar has contended what if a petition is filed before a Tribunal, it is still at the stage of the scrutiny, it has not even come up before the Tribunal. I decline to accept the said submission, as it is

fundamentally flawed. If a quasi judicial authority or a Tribunal does not have jurisdiction to entertain a petition merely because it is at the stage of filing, it cannot be permitted to be proceeded further. If these submissions of the learned senior counsel is to be accepted, then it would be diluting the concept of jurisdiction itself, which dilution this Court would never even attempt to make. Therefore, if the petition is not fileable before the Tribunal, it cannot be allowed to be proceeded up to the stage of whether it is entertainable. A non-fileable petition has dire consequences, let alone its entertainment. Therefore, such proceedings which are on the face of it, *de hors* jurisdiction must be nipped in the bud and should never be allowed to germinate any further.

17. Learned senior counsel Sri S. Basavaraj representing the respondent/Company has again strenuously contended that the agreements entered into between the petitioners and the would clearly indicate that it is tacit guarantee that they have stood for. Merely because they are a partnership firm, the jurisdiction of the Tribunal cannot be taken away. The submission is again

unacceptable, on a plain reading of the agreement. The relevant clauses of the agreement reads as follows:

"....

V. NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1) *The Parties hereto agree that out of the amount of Rs. 183,50,00,000/= (Rupees One Hundred and Eighty-three Crores Fifty lakhs only) paid by the Developer to the Owners under the Memorandum of Understanding and the Principal Agreement, a sum of Rs.40,00,00,000/- (Rupees Forty Crores only) was paid in advance as per the request of the Owners shall be treated as a Interest bearing refundable deposits from the Second Party to the First Party, and thus only a sum of Rs. 143,50,00,000/= (Rupees One Hundred and Forty-three Crores Fifty lakhs only shall be treated as Interest free refundable deposits paid under the said Memorandum of Understanding and the Principal Agreement,*

2) *As the said sum of Rs.40,00,00,000/= (Rupees Forty Crores only) was paid in advance having been treated as Interest bearing refundable deposits from the Developer to the Owners with effect from 1st January 2011, and shall carry simple interest at the rate of 24% per month which is payable by the Owners commencing from 1st January 2011 the time of actual amount of Rs. 183,50,00,000/- (Rupees One Hundred and Eighty-three Crores Fifty lakhs only) become due and payable under Principal Agreement and the Owners complying with all the conditions precedent set out herein below:*

(a) Denotification of lands for the survey numbers which are notified, from acquisition proceedings initiated by the Bangalore Development Authority;

(b) Obtaining conversion orders for the lands wherever the same is not obtained for the survey numbers listed in the Schedule 'A' of the said Memorandum of Understanding and the Principal Agreement

(c) Obtaining transfer of katha with regard to all the Lands which are listed in the Schedule 'A' of the said Memorandum of Understanding and the Principal Agreement to the name of the present owners in the records of the Bruhat Bangalore Mahanagara Palike

(d) Making out good and marketable title with regard to the Properties mentioned in Schedule 'A' to the Memorandum of Understanding dated 23.12.2009 and Joint Development Agreements dated 29/10/2010, 31/3/2011 & 26/8/2010 to the satisfaction of the Purchaser,

3) The Owner acquiring additional 11 plus Acres of lands detailed in the annexure-1 attached hereto to make a contiguous single parcel of land.

4) For purpose of clause 2 compliance of the conditions precedent on part of the Owner shall be treated to be 15 days from the date of the Owners proving such compliance of the condition precedent to the Second Party by furnishing documentary evidence of the same.

5) In the event of failure on the part of the Owner in complying with the conditions precedent in terms of clause 2 above before 31st March 2013, then in such event, the Second Party shall become entitled to seek repayment of the amounts treated as Interest bearing refundable deposits under this agreement forthwith without any further delay and the Owner shall be liable to repay forthwith to the Developer, the entire sum of Rs.40,00,00,000/- (Rupees Forty Crores only) alongwith interest due and payable as on that day;

6) This Agreement shall be read in conjointly with the Memorandum of Understanding dated 23.12.2009 and Joint Development Agreements dated 29/10/2010, 31/3/2011 & 26/8/2010 and save and except what has been agreed herein, all the other terms and conditions of the Memorandum of Understanding dated 23.12.2009 and Joint Development Agreements dated 29/10/2010, 31/3/2011 & 26/8/2010 shall continue to be binding:

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT in the presence of the Witnesses attesting hereunder:

Far Manyata Instruclare Developments (P) Ltd.

*Sd/-
Managing Director*

For Manyata Reallty

*Sd/-
Managing partner*

WITNESSES:

1) *sd/-*

OWNER

2) *sd/-*

For Mantri Technology constellations pvt. Ltd.,

DEVELOPER

*Sd/-
Director/Authorised Signatory."*

Nowhere the Directors have stood as personal guarantee to any of the problems of the firm. Therefore, it cannot be said that the proceedings before the Tribunal are maintainable.

18. Learned senior counsel representing the respondent – company has sought to place reliance upon several judgments rendered by the Apex Court in the case of **DILIP B. JIWRAJKA VS. UNION OF INDIA** reported in **2023 SCC OnLine SC 1530**

and a constitutional Court of the High Court of Judicature at Madras in the case of **GOVERNMENT OF TAMIL NADU AND OTHERS VS. M/S.KAKKERA BROTHERS AND ANOTHER** reported in **2006-3-L.W.676**. The said judgments would not lend any support to the case projected by the learned senior counsel for the respondent – company as none of them considered the purport of Section 95 of the Code *qua* entertainment of a petition against the petitioner and the like. The said judgments are inapplicable to the facts of the case at hand.

19. The maintainability of the petition before the Tribunal cuts at the root of the matter, as it relates to jurisdiction, to entertain the petition by the Tribunal. The Code does not permit it. If that be so, even a speck of paper cannot move before a *fora* that has no jurisdiction. It is ununderstandable as to how and why the petitioners have to go before the Tribunal and tell the Tribunal that it has no jurisdiction to entertain the petition. The very acceptance of filing by the Tribunal is contrary to law.

20. For the aforesaid reasons, the following:

ORDER

- (i) The Writ Petitions are allowed.
- (ii) It is declared that the e-filing in filing No. 2903111/01786/2023 of the petitions by the 2nd respondent under Section 95 of the Insolvency and Bankruptcy Code, 2016 as *non est* and illegal and consequently, the proceedings at whatever stage they are, before the National Company Law Tribunal, stands quashed.
- (iii) The petitioners are held entitled to all consequential benefits that would flow from the setting aside of the proceedings in filing No.2903111/01786/2023.
- (iv) It is further made clear that any action taken on the registration of the proceedings also stand obliterated.

Pending applications, if any, also stand disposed.

**Sd/-
JUDGE**

bkp/CT:SS