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**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Through web-based video conferencing platform)**

**ITEM No.13
I.A.Nos.84/2021, 459/2022 in
C.P.(IB)No.305/BB/2019**

IN THE MATTER OF:

M/s. Kotak Mahindra Bank ... Petitioner
Vs.
M/s. Arun Shelters Pvt. Ltd. ... Respondent

Order under Section 7 of I&B Code, 2016

Order delivered on 15.11.2022

CORAM:

**SH. KISHORE VEMULAPALLI
HON'BLE MEMBER (JUDICIAL)**

**SH. MANOJ KUMAR DUBEY
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

The RP : Ms. Sripriya Kumar
For the RP/Applicant
in I.A.No.84/2021 : Shri Vijay Kumar
For the Respondent in
I.A.No.84/2021 : Shri Akshay J Simha
For the Applicant in : Shri S.S.Nagananda, Sr. Counsel with
I.A.No.459/2022 Shri Anandarama
For the R-1 : Shri Achalananda

ORDER

I. I.A.No.84/2021:

1. This Application has been filed by Ms. Sripriya Kumar, Resolution Professional of the Corporate Debtor, U/s.66 R/w. Regulation 35A of the IBC, 2016, against Shri Arun Kumar & Anr. (Respondents), seeking to declare the Agreement dated 09.11.2015 registered as Document No.BKI-2743/2015-16 in SRO Malleswaram, Bangalore as void and invalid and consequently not binding on the Applicant Corporate Debtor in view of the fraud committed by Respondent etc.

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2. Heard Shri Vijay Kumar, learned Counsel for RP along with Ms. Sripriya Kumar, learned Resolution Professional and Shri Akshay J Simha, learned Counsel for the Respondent.
3. In spite of availing substantial time, the learned Counsel for the Applicant has not filed rejoinder. As a last chance, two weeks' time is granted to the Applicant to file rejoinder, from today, failing which, their right to file the same shall stand forfeited and the Application will be decided based on the record available on the next date of hearing.
4. List the case on **14.12.2022**.

II. I.A.No.459/2022:

1. This Application has been filed by M/s. Kenstream Ventures LLP (Applicant/Financial Creditor), U/s.60(5) (b) & (c) of the IBC, 2016 R/w. Rule 11 of the NCLT Rules, 2016 against M/s. Kotak Mahindra Bank Limited & 2 Ors. (Respondents), by seeking to permit the Applicant to take steps and proceed in accordance with the provisions of Debenture Trust Deed dated 05.03.2018 to recover its dues from the Corporate Debtor and grant leave to the Applicant to file a suit before the competent court of law and/or to take all other measures as is available in Law to the Applicant to enforce the mortgage and for realization of sums due to the Applicant from the Corporate Debtor.
2. Initially, C.P.(IB)No.305/BB/2019 filed by M/s. Kotak Mahindra Bank Limited (Petitioner) was admitted by this Adjudicating Authority, vide its Order dated 31.01.2020, by initiating CIRP in respect of the Corporate Debtor, appointing Mr. Pankaj Srivastava as IRP. Pursuant to the same, the IRP caused a public announcement on 06.02.2020. In response thereto the Applicant herein submitted its claim as Financial Creditor of the Corporate Debtor in Form C dated 18.02.2020.
3. Subsequently, based on the judgment of Hon'ble NCLAT, New Delhi in the case of *Flat Buyers Association Winter Hills Vs. Umang Realtech Private Limited through IRP & Ors.*, this Bench has passed an order dated 29.06.2020 in I.A.Nos.187 & 195/2020 restricting the CIRP to 'Arun Auroville' Project. In view of the aforesaid order in I.A.Nos.187 &



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195/2020, the CoC was reconstituted only for 'Arun Auroville' project and the IRP rejected the claim of the Applicant stating that since the Applicant has funded the project 'Arun Parkwoods', and there is no CIRP proceedings against the said project, the CoC constituted pertains to 'Arun Auroville', the claim was kept in abeyance vide email dated 30.12.2020.

4. Aggrieved by the email dated 31.12.2020, the Applicant filed an I.A.No.59/2021 seeking a direction to the RP to consider the claim of the Applicant by including him as a Financial Creditor in CoC. However, the same was rejected vide Order dated 19.03.2021, as devoid of merits as the CIRP was restricted to only 'Arun Auroville' project whereas the Applicant funded the project for 'Arun Parkwoods'.
5. In this Application it has been contended that the Applicant is a Debenture Holder under the Debenture Trust Deed dated 05.03.2018, and exclusive charge has been created over the mortgaged properties unto and to the use of the Debenture Trustee for the benefit of the Debenture Holder absolutely. The Issuer/mortgagor and Promoters of the Corporate Debtor have committed default under the Debenture Trust Deed and the entire outstanding payment due to the Debenture Holder from the Mortgagor and Promoters is Rs.66,72,80,948/- as on 29.09.2022. In view of the Order of Moratorium, the Applicant is unable to exercise its rights under the Debenture Trust Deed and realize its dues. On the other hand, the resolution process in this case has been undertaken only in respect of one of the project of the Corporate Debtor i.e. 'Arun Auroville'. The Applicant though a Financial Creditor has not been included in the CoC, due to having the CIRP project-wise. Even the Resolution Plan submitted related to the project 'Arun Auroville' only. There is no resolution process in respect of the project 'Arun Kausthuba /Arun Parkwoods' with which the Applicant is concerned.
6. It is stated that no hardship, prejudice or loss will be caused to the Opponents as the present Resolution Plan does not include the Project with which the Applicant is concerned and therefore by permitting the

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Applicant to take steps as per Debenture Trust Deed, the present resolution process/plan will not be affected. The Corporate Debtor has not shown any inclination towards payment of the debt and it should not be permitted to take undue advantage of the order of moratorium whereas the resolution process/plan pertains to only one of its Projects.

7. Heard Shri S.S.Nagananda, learned Sr. Counsel along with Shri Anandarama, learned Counsel appearing for the Applicant and Shri Achalananda, learned Counsel appearing for the Respondent No.1 and Shri Vijay Kumar, learned Counsel for the Resolution Professional and Ms. Sripriya Kumar, learned Resolution Professional.
8. Shri S.S.Nagananda, learned Sr. Counsel for the Applicant submits that as a Debenture Holder, the Applicant being a Financial Creditor, is entitled to exercise its rights independently under the Debenture Trust Deed as a Secured Creditor by standing outside the liquidation process. Hence, he sought permission to proceed against the Corporate Debtor, before appropriate forum according to Law.
9. In view of the submissions, the instant Application is disposed of as prayed for.

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(~~MANOJ KUMAR DUBEY~~)
MEMBER (TECHNICAL)

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(KISHORE VEMULAPALLI)
MEMBER (JUDICIAL)