IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

I.A. No.223 of 2021 in
C.P. (IB) No.305/BB/2019
U/s. 66 of the IBC, 2016
r/w Regulation 35A the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

IN THE MATTER OF:

Sripriya Kumar
RP of M/s. Arun Shelters Pvt. Ltd.
224A (New 346/1),
(Next to National Public School),
Avvai Shanmugam Salai,
Gopalapuram,
Chennai – 600 086. … Applicant

VERSUS

Mr. Arun Kumar
Promoter Managing Director of
M/s. Arun Shelters Pvt. Ltd.
No.100, 04th Main
Amarjyothi Layout, RT Nagar,
Bangalore – 560 032. & Ors. … Respondents

Order delivered on 27.04.2022

Coram:
1. Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
2. Hon'ble Mr. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Applicant/RP : Mr. Vijay Kumar

For the Respondent No.1 : Mr. Akshay

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ORDER

Per: Ajay Kumar Vatsavayi, Member (Judicial)

1. The present Application has been filed by the Resolution Professional of M/s.Arun Shelters Pvt. Ltd. (in respect of Arun Aurovilla Projects) under Section 66 of the IBC, 2016, r/w Regulation 35A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 seeking for a direction to the Respondent No.1, who was the Promoter Managing Director of M/s. Arun Shelters Pvt. Ltd. to repay an amount of Rs.14 lakhs to the Corporate Debtor.

2. Heard Mr. Vijay Kumar, learned Counsel for the Applicant/Resolution Professional and Mr. Akshay, learned Counsel for the Respondent No.1. We have carefully perused the pleadings of the parties and extant provisions of the Code, and the Rules made thereunder.

3. It is submitted by the Applicant/RP that the Corporate Debtor i.e., M/s. Arun Shelters Pvt. Ltd. was admitted to CIRP on 31.01.2020, in respect of its project (Arun Aurovilla). The said Arun Aurovilla project is an independent real estate project, with 17 blocks of 4 residential villaments in each block and aggregating to a total of 68 units. The 02nd Respondents i.e., Mr. Manjunath Basavaraju & Mrs. Pushpa Mysore Puttanna was desirous of purchasing a residential unit in the project (Arun Aurovilla) bearing number Villament No.A-001, in A Block admeasuring 3385 sq. ft, and allotment letter dated 18.11.2014 was issued to them which is enclosed as Annexure 1 to the I.A.

4. The 02nd Respondents out of the total cost of the unit i.e. Rs.1,80,00,000/-, have made an initial payment amounting to Rs.34,00,000/- to the Corporate Debtor as under:

S. No.	Date	Mode	Receipt No.	Cheque No.	Amount in Rs.
1	06.11.2014	Cheque	3005	553890	20,00,000
2	06.11.2014	Cash	1925	-	10,00,000
3	15.12.2014	Cash	1927	-	4,00,000
				Total	34,00,000

The above payments are attached in (Annexure 2) of the present Application.

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5. Since the Company failed to deliver the project on time, the 02nd Respondents approached RERA, and the said authority vide an order dated 09th August 2019 directed to refund the above referred Rs.34,00,000/- along with interest amounting to Rs.17,48,711/-, thus totalling to an amount of Rs.51,48,711/- by 04.02.2020 (Annexure 4) of the I.A.
6. In the meanwhile since the CIRP was initiated against the Corporate Debtor and the 02nd Respondents preferred their claim before the Applicant/RP for a total amount of Rs.51,48,711/-, which was duly admitted by the Applicant/RP.
7. It is observed from the books of accounts of the Corporate Debtor that the payments received from the 02nd Respondents amounting to Rs.14,00,000/- in cash, was not accounted in the books of accounts of the Corporate Debtor as shown below, although the amount was admitted to have been received by 01st Respondent. The Ledger Account showed as under:

A 001 Manjunath Basavaraju						
Ledger Account						
1-Apr-2014 to 3-Apr-2020						
Date	**Particulars**		**Vch Type**	**Vch No.**	**Debit**	**Credit**
06.11.2014	By	Corp Bank CA A/c203001601000326/510331001249840 (AA)	Receipt	3002		20,00,000
		Being advance amt. received from Mr. Manjunath Basavaraju (A 001) GF A Block Sqft 3385/-rec #3002 Dt 06/11/14 chq #553890 Dt 6/11/14				
10.11.2014	To	Corp. Bank CA A/c203001601000326/510331001249840 (AA)	Bank	781	20,00,000	
		Being Cheque bounced (Payment stopped by the drawer)				
19.11.2014	By	Corp. Bank CA A/c203001601000326/510331001249840 (AA)	Receipt	3005		20,00,000
		Being advance amt. received from Mr. Manjunath Basavaraju (A 001) against rec # 3005 Dt. 14/11/14 Sqft. 3385/- GF for Auroville Project				
31.03.2015	To	Revenue Recognised (Auroville) FY 2014-15	Journal/18-19/	JV/18-19/1579	20,00,000	
Total					**40,00,000**	**40,00,000**

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8. On an enquiry from the officials of the Corporate Debtor by the Applicant/RP, it was informed that certain cash received was stated to have been accounted for in the cash book and represented as under:

Date	Amount	Debit	Credit
13 Dec 2014	10,00,000	Corporation Bank	Cash Account
03 Jan 2015	3,00,000	Corporation Bank	Cash Account
03 Jan 2015	1,00,000		Payments for Labour Charges

However, it is noticed that these transactions indicated payments from the Cash Book, without accounting for the receipts from the Respondent No.2.

9. Accordingly, the Applicant/RP submits that the 01st Respondent is liable to repay an amount of Rs.14 Lakhs due to the Corporate Debtor. On the other hand, the 01st Respondents through his Statement of Objections submitted that the amount of Rs.14 lakhs received from the 02nd Respondents by way of cash was deposited to the Corporate Debtor and out of the same a sum of Rs.10 lakhs was paid on 13.12.2014 and the balance amount of Rs.4 lakh was paid on 15.12.2014 by the 01st Respondent and the said cash payments were reflected in the cash book maintained by the Corporate Debtor and hence the 01st Respondent is not liable to pay any amount. It is further submitted that once the Applicant/RP admits that cash transactions amounting to Rs.14 lakhs towards payments were reflected in the Corporate Debtor's accounts, he cannot state that the amount of Rs.14 lakhs received by the 01st Respondent from the 02nd Respondents is different from that of an amount of Rs.14 lakhs of cash paid by the 01st Respondent towards expenses of the Corporate Debtor.

10. We find force in the submissions made on behalf of the 01st Respondent. It is not in dispute that 01st Respondent received Rs.14 lakhs in cash from the 02nd Respondents and also spent Rs.14 lakhs towards expenses of the Corporate Debtor, as is seen from the Cash Book discussed above.

11. It is not the case of the Applicant/RP that the 01st Respondent received any other cash payments other than the cash received from the 02nd Respondents and the 01st Respondent spent Rs.14 lakhs towards expenses of the Corporate Debtor out of other receipts. In the absence of any such contention along with supporting entries in the books of the Corporate Debtor, it cannot be held that the 01st Respondent utilised the

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amount of Rs.14 lakhs received in cash from the 02nd Respondents, for his personal purposes. In view of this finding, on facts, there is no need of delving upon any decision on which any of the parties placed reliance.

12. In the circumstances, and for the aforesaid reasons, the instant I.A. is dismissed.

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(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

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(AJAY KUMAR VATSAVAYI)
MEMBER (JUDICIAL)