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

IA No.115/2023
C.P. (IB) No.246/2019)
(Under Section 60(4) & 60(5) of the Insolvency and Bankruptcy Code, 2016)

In the matter of:-

India Asset Growth Fund and Anr. …Financial Creditor

VERSUS

Vikram Structures Private Limited …Corporate Debtor

And in the matter of IA No.115 /2023:-

Mr. Surender Devansani …Applicant
Resolution Professional,
Vikram Structures Private Limited (under CIRP),
1436, Anasuya Nilaya, 2nd Floor, 8th Cross,
10th Main, BTM Second Stage, Bengaluru - 560076

VERSUS

1. LIC Housing Finance Limited
   No. 15/1, Hayes Centre, Hayes Road,
   Bengaluru, Karnataka -560025 …Respondent No.1
   Gem Plaza, Infantry Road,
   Bangalore -560001

2. Mr. Vikram Prabhakar
   Suspended Managing Director,
   Vikram Structures Private Limited (under CIRP),
   At: 36/1, 7th Cross, 8th Main,
   RMV extension, Sadashivnagar,

Bangalore – 560080 …Respondent No.2

3. Byrareddy Gummareddy Aishwarya
   W/o Vikram Prabhakar,
   At: 36/1, 7th Cross, 8th Main,
   RMV extension, Sadashivnagar,
   Bangalore – 560080 …Respondent No.3

Order delivered on: 15.02.2024

Coram: 1. Hon'ble Shri K. Biswal Member (Judicial)
2. Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

Parties/Counsels Present:

For the RP	:	Ms. Aishwarya Prasad
RP	:	None

O R D E R

I.A No.115/2023

Per: Manoj Kumar Dubey, Member (Technical)

This Application has been filed on 15.02.2023 by Mr. Surendra Devasani, Resolution Professional (Applicant), U/s 60(5) and 60(4) of the IBC, 2016 R/w Rule 11 of the NCLT Rules, 2016 against LIC Housing Finance Limited and Ors (Respondent No.1, 2 & 3) seeking an order directing the Respondent no.1 to remit any excess amount that may be realised from the sale of Schedule Property i.e., *Southern portion of vacant land bearing: KH no.26/2, Sy. No.26/2, Bengaluru North Taluk, BBMP Ward No. 39 situated at Nagasandra Village Yeshwanthapura, Bengaluru -560020* under the provisions of the SARFAESI Act, 2022 that may be in excess of the loan outstanding of the Respondent No.2 and Respondent No.3 (in the books of the Respondent No.1) to the credit of the CD to partly recover the amounts due to the CD from the Respondent No. 2 and 3.

1. It is submitted by the applicant that on 26.09.2017, Respondent No, 2 and 3 availed a loan from the Respondent No.1 to the tune of Rs.8,00,00,000 by placing the Schedule Property as security and got

disbursed an amount of Rs.5,22,00,000/- under the Loan Account bearing no. 410200006369 for purchase of the Schedule Property. The Respondent No. 2 and 3 made part payments to the tune of Rs.1,32,67,329/- during the period from October 2017 to November 2020 from CD's account using the funds of the CD but the property was purchased in the names of Respondent No.s 2 and 3. Due to this fact, it is contended that the Schedule property was purchased for the CD but in the name of Respondent no. 2&3.

2. As the respondent Nos. 2 and 3 were defaulting in monthly repayments, Respondent No.1 issued a Loan Recall Notice dt.21.05.2022 informing that the Loan account has become NPA, and it will proceed with the sale of Schedule Property under SARFAESI Act, 2002 to recover the dues amounting to Rs.6,14,80,431.04/- on or before 4.06.2022.
3. Respondent No.2 issued a letter to the Applicant on 12.07.2022 requesting the applicant/RP to consider the Schedule Property as an asset/property of the CD under the CIRP as the payments for the purchase of the Schedule Property such as the margin money and EMI's for the Loan have been paid from the funds of the CD and he was willing to transfer the property to the CD. The RP discovered that the value of the Schedule Property is higher than the Loan availed by the Respondent No.2 and 3.
4. Thus the RP issued a letter to the Respondent No.1 requesting details of the loan documents and the latest outstanding on 10.12.2022. The Applicant/RP states that no response has been received to the letter dt.10.12.2022 and the RP is unaware of the current outstanding payable by Respondent No.2 and 3 or any other details regarding the Loan.
5. The RP contends that since the commencement of CIRP vide order dt.17.02.2022, the applicant/RP has been put in charge of all the affairs of the CD and since the part-payment of loan amounts was made until November 2020 from the account of the CD, the Respondent No.1 is bound by law to inform RP if any steps have been taken towards recovery under the SARFAESI Act, 2002. Additionally, as per Section 25 (2) (b) of the Code, RP is duty bound to preserve and protect the assets of the CD including continued business operations of the CD. Accordingly, the RP is exploring every avenue to bring back the funds to the credit of the CD.

6. The RP contends that pursuant to the Transaction Audit Review of the CD for the years 2017-2022, it was realised that certain preferential, undervalued and fraudulent transactions were carried out by the erstwhile management of the CD (including Respondent No.2 and 3) prior to the commencement of the CIRP. The RP is in the process of recovering funds of the CD that were siphoned off by the Respondent No. 2 and 3, for which applications have been filed u/s 43, 45 and 66 of the Code.
7. Thus, RP contends that since the affairs of the CD have been carried out in an opaque manner and since the Respondent No.2 has admitted to have used the funds of the CD for payment of Margin money and EMIs for the purchase of property mortgaged to Respondent No.1, any excess amount in pursuance of sale of the Schedule Property after the payment of loan is liable to be credited to the CD.
8. Though, due to rejection of the proposed Resolution Plan, the CoC has opted for Liquidation of the CD, the RP/Liquidator has to ensure that all amounts due to the CD are duly collected.
9. Since none appeared for the Respondent and no objection has been filed, we have heard the counsel for the Applicant and carefully perused the pleadings on record.
10. It is seen that vide order dt.03.10.2023 this Tribunal forfeited the right of filing reply of the Respondent due to non-availing of opportunities granted by this court on 18.04.2023, 06.07.2023, 23.08.2023 and remaining unrepresented on 23.08.2023 and 3.10.2023. On 15.12.2023, again no one attended for the respondent and the matter was reserved.
11. On the perusal of the above facts and circumstances, it is observed that the Respondent No.2 and 3 availed loan facility from Respondent No.1 and were making part payments from the funds of the CD's bank account. Subsequently, the respondents defaulted in making payments due to which a Loan Recall Notice was issued by Respondent No.1 which stated that the Loan account was classified as an NPA and it will proceed with recovery of dues with sale of Scheduled Property under SARFAESI Act, 2002. Pursuant to Loan Recall Notice, the Respondent No.1 has written a letter to the CD on 12.07.2022 admitting to making payments for the purchase of schedule property from the account of CD and stating his willingness to transfer the Schedule Property to the CD.

12. In this connection, it is pertinent to refer to the order of Hon'ble NCLAT in the case of Jet Aircraft Maintenance Engineers Welfare Association v. Ashish Chhawchharia, (Company Appeal (AT) (Insolvency) No. 628 of 2020) order dt.14.02.2022 wherein it was observed that "the object of the Code is clearly that there should be no depletion of Corporate Debtor's assets during the CIRP. The assets of the Corporate Debtor have to be preserved, protected, guarded for a successful insolvency resolution, which is the object of engrafting Section 14 in the statute." In the incumbent application, The Respondent No.2 has not only admitted to the fact that the payment for the loan undertaken to purchase the Schedule Property was made from the funds of the CD; but also stated that he is ready and willing to assign the Scheduled Property to the CD. Moreover, as stated above, it is alleged that the Respondent No. 2&3 have also siphoned off CD's funds for which application u/s 43 and 45 and 66 of the Code have been preferred by the RP. We are in agreement with RP's contention regarding the entitlement of the CD on the excess amount realised from the sale of the Scheduled Property by the Respondent No.1.
13. Having considered the abovementioned reasons, we are of the view that pursuant to the admission of Respondent No.2 regarding making payments for the purchase of the schedule property from the funds of the Corporate Debtor, the excess amount recovered from the sale of such property has to be remitted to the credit of the Corporate Debtor and the Respondent No.1 shall not set off any amount recovered in excess from the sale of the Schedule Property, against the debit balances in other loans availed by the Respondent Nos. 2 and 3, if any. The Respondent No. 1 is directed to make compliance of this order accordingly, within a period of 45 days from this order.
14. Accordingly, **I.A. No. 115 of 2023 in CP (IB) 246 of 2019** is hereby **disposed of** with above directions.

S/d

(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)

S/d

(K. BISWAL)
MEMBER (JUDICIAL)