(2026) 06 NCLAT CK 0764

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi, CHENNAI Bench

Case No : Company Appeal (AT) (CH) (Ins) No.313/2026 (IA Nos.885, 886, 887 & 888/2026)

M/s. Fortuna Buildcon (India) Pvt. Ltd. APPELLANT

Vs

Fortuna Integral Projects Private Limited RESPONDENT

Date of Decision : 30-06-2026

Acts Referred:
I & B Code, 2016 — Sections 43, 44, 45, 46 & 49, 48, 60(5)
NCLT Rules, 2016 — Rule 32
SARFAESI Act — Section 13(2), 13

Citation : (2026) 06 NCLAT CK 0764

Hon'ble Judges : Justice Sharad Kumar Sharma, Member (Judicial);Jatindranath Swain, Member (Technical)

Bench : Division Bench

Advocate : For Appellant : Mr. Rohan Kothari, Mr. Abhishek Sriram & Mr. Arun Jagannathan, Advocates; For Respondents : Ms. Pearl Majithia, Advocate for R2

Final Decision : Dismissed

Judgement

(Hybrid Mode) Oral Judgment: Justice Sharad Kumar Sharma, Member (Judicial):-30.06.2026:

A brief reference of facts are required to be made in order to better understand the challenge given to the impugned order dated 26.05.2026, given by the Appellant, who happens to be a Successful Resolution Applicant, as it has been passed by the Learned NCLT, Bangalore Bench in IA No.877/2025 in CP(IB) No.124/BB/2017.

2. The Appeal has been preferred by the Appellant, i.e., M/s. Fortuna Buildcon (India) Pvt. Ltd., being the Corporate Debtor now under the management of the Successful Resolution Applicant M/s. Phalada Developers Pvt. Ltd., whose resolution has been approved and has been implemented too.

3. The impugned order, which is under challenge, is an order that, has been

passed on IA No.877/2025, that was preferred in the Company Petition,whereby the Impleadment Application, preferred by M/s. Fortuna Integral Projects Private Limited, i.e., Respondent No.1, seeking to implead Respondent No.5, i.e., M/s. Tumkur Grain Merchants Co-operative Bank Limited, has been allowed, thereby directing the newly impleaded Respondent No.5 herein, to be made as part of the proceedings of the IA No.382/2021, which is alleged that, the said Impleadment Application ought not to have been allowed because of the fact that the orders on IA No.382/2021 at that point of time already stood reserved.

4. Brief facts are that, on 09.12.2021, the Resolution Professional had filed the application IA No.382/2021 in CP(IB) No.124/BB/2017, under Sections 43, 44, 45, 46 & 49 of the I & B Code, which was to be read with Rule 32 of the NCLT Rules, 2016. In the application thus preferred, the prayer sought for, was for setting aside the impugned agreement for sale dated 12.03.2019, which was entered into between Respondent No.3 therein, i.e., M/s. Fortuna Integral Projects Private Limited and the Corporate Debtor. It was contended that, the said agreement to sale was entered into between the 3rdRespondent and the Corporate Debtor to sell the schedule property that was belonging to the Corporate Debtor, in favour of the 3rdRespondent therein, i.e., M/s. Fortuna Integral Projects Private Limited. Consequently, based upon set of facts that have been narrated in the application, the Resolution Professional had prayed for the following reliefs: -

> "(a) *Allow the present application;*
>
> (b) *In exercise of its power under Sections 43, 44, 48 and 49 of the Code, avoid and set aside (i) the agreement of sale dated 12.03.2019 (ANNEXURE A), and (ii) the Amendment to the agreement of sake dated 20.04.2019 (ANNEXURE R), both entered into by the Corporate Debtor in favour of the third respondent and declare that the aforesaid agreements are not binding on the Corporate Debtor;*
>
> (c) *Issue a direction to the jurisdictional sub-registrar to note the setting aside of the Agreement of sale dated 12.03.2019 entered into by the Corporate Debtor in favour of the Third Respondent;*
>
> (d) *Grant liberty to the Applicant to initiate appropriate legal action, both civil and/or criminal, to safeguard possession of the Schedule Property in the event of interference by the Respondents or any other person acting through or under them with the peaceful possession of the Schedule Property by the Corporate Debtor; and*
>
> (e) *Any other relief as deemed just."*

The orders on the same, i.e., IA No.382 of 2021 were reserved on 09.09.2025.

5. The facts reveal that, there was yet another application **IA No.596/2024**, which was filed on 27.06.2024 Respondent No.1, M/s. Fortuna Integral Projects Private Limited in CP(IB) No.124/BB/2017 before the Learned NCLT, wherein the IA that was preferred on 27.06.2024, where the said Applicant had prayed for a direction to receive the balance sale consideration amount of Rs.2,17,91,500/- and to execute the registered Sale Deed in respect of the scheduled property in favour of the Applicant company therein, and further to grant any other relief.

The relevant relief is extracted hereunder: -

> "1. *Direct the Respondent to receive the balance sale consideration amount of Rs.2,17,91,500/- (Rupees Two Crores Seventeen Lakhs and Ninety One Thousand Five Hundred Only) and to execute and register the sale deed in respect of the schedule property in favour of the Applicant Company herein, and*
>
> 2. *Grant any other relief deemed fit by this Hon'ble Tribunal, in the interest of justice and equity."*

6. This application, IA No.596/2024, preferred by invoking the provisions contained under Section 60(5) of the I & B Code, 2016, was taken up for consideration by the Learned Tribunal and the Learned Tribunal had passed a separate order on 26.05.2026, whereby the Learned Tribunal had proceeded to pass an order, wherein it was observed that the enforcement of the agreement of 2019-2020 by filing an application in 2024, i.e., IA No.596/2024 without any reasonable explanation for the laches, is not permissible under law, and that the Agreement for Sale does not confer any right over the property to the Applicant and the similarly no right would flow from the discharge deed dated 21.04.2025. Hence, IA No.596/2024 was dismissed with the following observations: -

> "11. *Moreover, the SRA of the Corporate Debtor has filed a memo vide diary no.4932 on 09.09.2025 which contains the discharge deed dated 21.04.2025 executed between TGMC Bank. RT Nagar branch Bengaluru and the Corporate Debtor wherein TGMC Bank has acknowledged that the Corporate Debtor is now owned by SRA i.e., M/s. Phalada Developers Pvt. Ltd. and the Bank has discharged the Corporate Debtor after satisfaction of all of its claims against the Corporate Debtor upon necessary payments and consequently issued discharge of equitable mortgage deed created in favour of TGMC Bank over the Schedule Property.*
>
> 12. *This reflects the possible dubious role played by the TGMC Bank in receiving money from Applicant by keeping the CoC in dark and again pursuant to filing claim before RP and receiving amount under approved resolution plan and issuing discharge slip of loan to both. It needs to be summoned to explain the entire scenario as also its conduct as a public institution.*
>
> 13. *The Application seeking enforcement of agreements of 2019-20 by filing application in 2024 without cogent explanation for time-lag, is barred by limitation.*
>
> 14. *Thus, in view of abovementioned reasons specifically Agreement of sale does not confer right over a property to the applicant and discharge deed dated 21.04.2025, the instant application is* ***dismissed.****"*

7. We have to keep in mind that the decision taken on the application IA No.596/2024 on 26.05.2026, which though was a separate order altogether, it was in the context of the relief for acceptance of the balance amount of the sale consideration and for executing the registered Sale Deed of the schedule property, which is the subject matter in the application i.e., IA No.382/2021, in which Respondent No.5 has been directed to be impleaded by the impugned order. The issue under consideration, in IA No.596/2024, was that prior to the commencement of the CIRP, the scheduled property had been mortgaged in favour of M/s. Tumkur Grain Merchants Co-operative Bank Limited, by depositing

of the title deed dated 20.01.2014, that due to non-repayment of loan, had initiated the proceedings by issuance of the demand notice under Section 13(2) of the SARFAESI Act in 2019, that in view of recovery proceedings being undertaken under Section 13 of the SARFAESI Act along with the imminent threat of auction of the scheduled property, the Corporate Debtor approached M/s. Fortuna Integral Projects Private Limited for the sale of scheduled property and the agreement of sale pertaining to the sale of the property was said to have been executed, for which the bank, which was the sole secured Financial Creditor, had given no objection on 07.03.2019, permitting the sale of the property, subject to the crediting of the sale proceeds to the loan account and therefore, the transactions should not be treated as a preferential or undervalued transaction as the amount realised from the said transaction was remitted to M/s. Tumkur Grain Merchants Co-operative Bank Limited. The order that was passed on IA No.596/2024 dismissing the same **has not been challenged by any of the parties to the proceedings of the instant Company Appeal**.

8. In the proceedings of IA No.382/2021, that was preferred in the Company Petition invoking Sections 43, 44, 45, 46 & 49 of the I & B Code, an IA No.877/2025 was filed by the Resolution Professional of M/s. Fortuna Buildcon Private Limited, (Respondent No.2 in this Appeal) on 06.10.2025 seeking to implead the proposed Respondent in the proceedings of IA No.382/2021, M/s. Tumkur Grain Merchants Co-operative Bank Limited. We are reminded that the order on IA No.382/2021, was reserved on 09.09.2025, and after the said order only, IA No.877/2025 was preferred by the Applicant/Respondent No.3, seeking to introduce M/s. Tumkur Grain Merchants Co-operative Bank Limited, as Respondent No.4 in IA No.382/2021 filed by the Resolution Professional. The said IA No.897/2025 remained pending on the file of IA No.382/2021.

9. When the IA/382/2021 and IA/877/2025 came up for consideration before the Learned Tribunal on 26.05.2026, along with another IA No.596/2024, Learned Tribunal proceeded first to dismiss IA No.596/2024, and then keeping in mind the observations made in the order passed on IA No.596/2024 in respect of Tumkur Grain Merchants Cooperative Bank and the pleadings made in IA No.877/2025, decided that the said Tumkur Grain Merchants Co-operative Bank has to be impleaded in IA No.382/2021 and allowed in IA No.877/2025 praying for impleadment of M/s. Tumkur Grain Merchants Co-operative Bank Limited, on the proceedings of IA No.382/2021. Further, noting that orders on IA No.382/2021 had already been reserved, Learned Tribunal deserved the said orders in IA No.382/2021, allowing the Resolution Professional Respondent No.2 herein to file a fresh memo of parties with liberty to modify the pleadings qua the said bank by next date. Learned Tribunal took the aforesaid view because of the fact that in the order of 26.05.2026 that, had been passed on IA No.596/2024 Learned Tribunal had explored in detail the status and rights of M/s. Tumkur Grain Merchants Co-operative Bank Limited on the property of the Corporate Debtor and had also dwelt at length on the apparently dubious role played by the said Bank during the CIRP of the CD, had also recorded that the ‘Bank’ needs to

be summoned to explain the entire scenario as also its conduct as a public institution. Accordingly, the Learned Tribunal came to a conclusion that, M/s. Tumkur Grain Merchants Co-operative Bank Limited would be a necessary party and therefore it would be apt that, the order passed on 09.09.2025 on IA No.382/2021 reserving the orders is to be de-reserved so that the newly impleaded M/s. Tumkur Grain Co-operative Bank Limited may be heard prior to passing any orders in the proceedings that were being held under Sections 43, 44, 45, 46 & 49 of the I & B Code.

10. The Learned Counsel for the Appellant has submitted that, the order that has been impugned herein in the instant Company Appeal, being an order of impleadment passed on IA No.877/2025, that cannot be said to have been passed with a rational and judicious application of mind, as the Learned Tribunal has not recorded any finding, nor he was given an opportunity to controvert the contents of the applications IA No.877/2025, necessitating to implead M/s. Tumkur Grain Merchants Co-operative Bank Limited. So far as this complexion of argument as extended by the Learned Counsel for the Appellant is concerned, we may not be required to venture into for the reasons, for the reason being that the Appellant is conscious of the order passed on IA No.596/2024, wherein the status of M/s. Tumkur Grain Merchants Co-operative Bank Limited, was considered while rendering Judgment on 26.05.2026 in IA No.596/2024, and the reasons assigned therein have been derived by Learned Tribunal for necessitating the hearing of M/s. Tumkur Grain Merchants Co-operative Bank Limited in IA No.382/2021, after permitting it to be impleaded, and that is why the impleadment has been directed to be made on the basis of the decision and the reasoning that has been rendered on IA No.596/2024. If that be so, until or unless the Appellant challenges the decision of 26.05.2026 independently as rendered in IA No.596/2024, which has been derived to be the reason for directing the impleadment of M/s. Tumkur Grain Merchants Co-operative Bank Limited, the Appellant cannot effectively put a challenge the impugned order of impleadment dated 26.05.2026, that was passed on IA No.877/2025, because the justification of the impleadment has been carried and contained to be derived from the unchallenged decision of IA No.596/2024.

11. If that be the case, where the basic foundation for necessitating the impleadment of M/s. Tumkur Grain Merchants Co-operative Bank Limited, remains unchallenged, it cannot be said that the order directing the impleadment of M/s. Tumkur Grain Merchants Co-operative Bank Limited in IA No.382/2021, that was preferred in CP(IB) No.124/BB/2017, could be said to be bad in the eyes of the law, and if that be so, once the impleadment has been permitted based on the decisions of IA No.596/2024, the de-reserving of the proceedings was imminent and inevitable because if had the order dated 09.09.2025 of reserving the order is permitted to continue, it would not have helped resolve the dispute, for the purpose of deciding IA No.382/2021, because IA No.382/2021 could not have been decided without hearing M/s. Tumkur Grain Merchants Co-operative Bank Limited. In these eventualities, the Learned Tribunal was not

required to give a detailed elaboration of the reasons behind the order passed on IA No.877/2025, which was based upon the finding recorded on IA No.596/2024. Similarly, no detailed reasoning was not required to be given for the orders passed on IA No.382/2021, where it was ordered to be 'De-reserved' and was opened up for fresh herring and consideration after the impleadment of M/s. Tumkur Grain Merchants Co-operative Bank Limited, in the said IA No.382/2021. In that eventuality, the arguments extended by the Learned Counsel for the Appellant is not sustainable, and it cannot be said that the impugned order was without any reasoning. Besides that, so far as the aspect pertaining to the de-reserving of the order, we make it clear that the Learned Tribunal has enough inherent powers vested with it to de-reserve its order and to hear a party afresh on merits in the interest of justice so that all the parties to the proceedings are heard, and the effective adjudication takes place, move to under the peculiar circumstances of the instant case, where M/s. Tumkur Grain Merchants Co-operative Bank Limited, has been permitted to be impleaded in IA No.382/2021, being the proceedings under Sections 43, 44, 45, 46 & 49 of the I & B Code. Thus, we don't find merit in the Company Appeal. The **Comp App (AT) (CH) (Ins) No.313/2026** accordingly lacks merit, and the same is accordingly dismissed.

12. However, after pronouncement of the order, the Learned Counsel for the Appellant has candidly submitted that an appropriate direction may be issued requesting the Learned Adjudicating Authority, i.e., NCLT, Bengaluru Bench, to expedite the hearing of IA No.382/2021, being the proceedings that were being held under Sections 43, 44, 45, 46 & 49 of the I & B Code, which is pending consideration since 09.12.2021. Owing to the fact, there happens to be a long-drawn history of litigation amongst the parties, we request the Learned Adjudicating Authority, to decide the application IA No.382/2021, as expeditiously as possible, and preferably within a period of three months from the date of production of a certified copy of this order. All pending Interlocutory Applications being Exemption Application IA No.886/2026, Application for Leave to Appeal for IA No.887/2026, Application for IA No.888/2026 for taking additional documents on record, they are not required to be ventured into independently. Hence, they would stand closed.

[Justice Sharad Kumar Sharma] Member (Judicial) [Jatindranath Swain] Member (Technical)