

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1471 of 2022
&
I.A. No. 4633, 4634 of 2023 & 770 of 2025

(Arising out of the Order dated 11.11.2022 passed by the National Company Law Tribunal, New Delhi Bench (Court-II) in CP (IB) No. 419(ND)/2022)

IN THE MATTER OF:

Lotus 300 Apartment Owner Owner's Association,
GH-01, Sector 107, Noida,
Gautam Budh Nagar 201301

...Appellant

Versus

1. IndusInd Bank Ltd.,
(Acting through its Authorized Officer)
Branch Office at Hyatt Regency Complex,
11th Floor, Block A,
District Centre, Bhikaji Cama Place,
R.K. Puram, New Delhi – 110066.

...Respondent No. 1

2. Hacienda Project Private Limited
Having Registered Office at:
C-23, Greater Kailash Enclave Part-I,
South Delhi, New Delhi-110048.

Also at:
Tech Boulevard, Central Block,
Plot No. 6, Sector 127,
Noida, Uttar Pradesh-201301,

Through its Interim Resolution Professional
Shri Ayyagari Viswanadha Sarma
Registration No. IBBI/IPA-001/IP-01524/2018-
19/12396,

...Respondent No. 2

3. Interim Resolution Professional/ Resolution Professional of the Corporate Debtor

presently being

Shri Ayyagari Viswanadha Sarma

Registration No. IBBI/IPA-001/IP-01524/2018-19/12396,

C-23, Greater Kailash Enclave Part-I,
South Delhi, New Delhi-110048.

Also at:

Tech Boulevard, Central Block,
Plot No. 6, Sector 127,
Noida, Uttar Pradesh-201301.

...Respondent No. 3

Present

For Appellants: Ms. Purni Gupta, Ms. Henna George & Ms. Sunidhi Sah, Advocates.

For Respondents: Mr. Diwakar Maheshwari, Ms. Pratiksha Mishra & Mr. Karan Bhootra, Advocates for R1.

J U D G E M E N T

(28.05.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present Company Appeal (AT) (Ins) No. 1471 of 2022 has been filed by the Appellant i.e. Lotus 300 Apartment Owners', which represents the owners of 330 residential Apartments in Lotus 300 Project of the Corporate Debtor, Hacienda Projects Pvt. Ltd., under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('Code'), challenging the Impugned Order dated 11.11.2022 passed by the National Company Law Tribunal, New Delhi Bench (Court-II) ("Adjudicating Authority") in CP (IB) No. 419(ND)/2022.

2. IndusInd Bank Limited, who is the Financial Creditor, is the Respondent No. 1 herein.
3. Hacienda Projects Pvt. Ltd., who is the Corporate Debtor, is the Respondent No. 2 herein.
4. Interim Resolution Professional/Resolution Professional of the Corporate Debtor is the Respondent No. 3 herein.
5. The Appellant submitted that it is the sole registered association since 31.10.2019 representing buyers of all 330 apartments in the Lotus 300 Project, the only real estate project of Hacienda Projects Pvt. Ltd., launched in 2010 at Plot No. GH-01/A, Sector 107, Noida. All apartments are sold, with 295 owners having made full payments and received fit-out possession letters.
6. The Appellant submitted that the project, slated for completion by 2014, was abandoned by the Corporate Debtor's promoters, who siphoned off Rs. 190 Crores, prompting FIRs and a charge sheet. The Appellant submitted that it recovered Rs. 25 Crores via Economic Offences Wing, Delhi, and Rs. 18.78 Crores through Delhi High Court proceedings, reflecting its proactive efforts to protect homebuyers.
7. The Appellant contended that homebuyers invested over Rs. 636 Crores between 2010-2014, with a financial stake exceeding Rs. 1,000 Crores. Since 2019, the Appellant has funded Rs. 15 Crores and plans Rs. 10-15 Crores more to fully complete the project, with two towers complete, four near completion.

8. The Appellant submitted that the project's external development (central park) is at the final stage, and the community club is partly done, but completion is stalled due to unpaid Noida Authority dues, hindering occupancy certificates and sale deed registrations, despite homebuyers' payments to the Corporate Debtor.

9. The Appellant contended that the Impugned Order, admitting the Section 7 petition by IndusInd Bank for Rs. 33 Crores, was passed mechanically without notice to the Appellant, violating principles of natural justice. It is the case of the Appellant that the loan appears collusive, as the project was fully funded by homebuyers, and the Bank's claim is a fraction of the homebuyers' stake.

10. The Appellant submitted that the Adjudicating Authority failed to consider the project's near-completion and homebuyers' efforts, contravening *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*, [(2022) SCC OnLine SC 841], which holds that CIRP admission under Section 7(5) of the Code is discretionary and must account for the Corporate Debtor's viability and stakeholders' interests.

11. The Appellant contended that the Resolution Professional's takeover would delay completion, as it lacks funds and capability to finish the project, creating a quandary for homebuyers who have waited 8-10 years, enduring EMI and rent burdens.

12. Concluding his arguments, the Appellant requested this Appellate Tribunal to keep the Impugned Order in abeyance and allow its prayers.

13. Per contra, the Respondent No.1, the main contesting Respondent, denied all averments made by the Appellants as misleading and baseless.

14. The Respondent No. 1 submitted that the present appeal filed by the Appellant against the Impugned Order dated 11.11.2022, is not maintainable, as the Appellant lacks locus standi, not being a party to the original proceedings. The Appellant's impleadment in Company Appeal No. 1410/2022 filed with Suspended Director of the Corporate Debtor (also being heard by us along with this appeal), allows it to agitate grievances there, rendering this appeal redundant.

15. The Respondent No. 1 contended that the Impugned Order, admitting the Section 7 application under the Code, is well-reasoned, having considered the Corporate Debtor's submissions and the Adjudicating Authority rightly found that the Corporate Debtor's default of Rs. 33,00,42,833.09/- justifies CIRP initiation.

16. The Respondent No. 1 submitted that the Appellant's allegation of a collusive loan is baseless and unsubstantiated. The Bank's application under Section 7 seeks recovery of rightful dues from the Corporate Debtor, which has been a Non-Performing Asset since 29.12.2020, negating claims of temporary hardship.

17. The Respondent No. 1 contended that the Lotus 300 Project is far from complete, with only two of six towers finished and pending works (main electricity, basement, fire ventilation, club, swimming pool, horticulture, and

main gate) requiring at least two years. The Corporate Debtor's failure to pay Noida Authority dues further obstructs project completion.

18. The Respondent No. 1 submitted that the Appellant's claim of promoters siphoning Rs. 190 Crores is irrelevant to this appeal and should be addressed before the Adjudicating Authority or RERA and not before this Tribunal in guise of Appeal against the Impugned Order.

19. The Respondent No. 1 submitted that CIRP does not prejudice homebuyers, as the CoC itself can take measures like raising funds on the basis of the Corporate Debtor's assets (Lotus 300 being the primary asset), collecting pending dues from homebuyers and the Appellant part of CoC can oversee completion. The Appellant's reliance on *Vidarbha Industries Power Ltd. (Supra)* is misplaced, as the Adjudicating Authority applied its judicial mind and found no exceptional circumstances to deny CIRP.

20. The Respondent No. 1 submitted that the Adjudicating Authority's findings align with precedents like *Drip Capital Inc. v. Concord Creations*, [(2021) SCC OnLine NCLAT 616], which upheld CIRP admission upon established default. The Corporate Debtor's claim of financial viability is undermined by its failure to repay debts despite project sales.

21. Concluding his pleadings, the Respondent No.1 requested this Appellate Tribunal to dismiss the appeal.

Findings

22. We note that the Appellant has sought the following relief.:

“a. That the judgment and order dated 11.11.2022 passed by the Ld. Adjudicating Authority, New Delhi Bench in CP (IB) No. 419(ND)/2022 be set aside to a limited extent such that appropriate directions are incorporated whereby: -

(i) The Appellant Association is permitted to complete the Project Lotus 300 (as more particularly described hereinabove in the Appeal) by completing the balance remaining work in the Project "Lotus 300" and keeping the insolvency process in abeyance.

(ii) The Resolution Professional be restrained from taking over the Project Lotus 300, be restrained from interfering in the work of the Appellant Association in the said Project and should allow the Association to complete the said Project.

(iii) In order to continue the Corporate Debtor as a going concern, the Resolution Professional and/or the Corporate Debtor be directed to take steps to execute and register the necessary Sale Deeds in favour of the members of the Association who have purchased flats in the said Project and as also seek all necessary statutory permissions for the said real estate project if so required by the Association.

(iv) Protect the rights and assets of the Home Buyers.

(v) Pass other directions necessary to give effect to aforesaid prayers.

- b. To set aside and modify the impugned order to the limited extent as described in prayer (a);*
 - c. To pass final orders in terms of prayer (a) such that the Corporate Insolvency Resolution Process of the Corporate Debtor and/or any Resolution Plan shall not affect any act done, completed in terms of the directions given in prayer (a);*
 - d. To keep the Insolvency Process of the Corporate Debtor abeyance with necessary directions as described in prayer (a);*
 - e. Such further and/or other order and/or orders be made and/or direction and/or directions be given as to which this Hon'ble Tribunal may deem fit and proper.*
- Such further and/or other order or orders be passed, direction or directions be given as Your Lordships may deem fit and proper. And your petitioner, as in duty bound, shall ever pray.”*

(Emphasis Supplied)

23. Thus, we observe that it is the case of the Appellant that the Appellant representing homebuyers, who had invested their hard earned money and paid more than Rs. 636 Crores between the years 2010 to 2014 to the Corporate Debtor and their financial stake is more than Rs. 1000 Crores in the project should be allowed to command the project without Promoters or Resolution Professional, keeping CIRP in abeyance.

24. The project was supposed to be completed by the year 2014, has not yet been completed due to failure of the Corporate Debtor, and due to alleged

siphoning of Rs. 198 Crores (approx.) by the Promoters of the Corporate Debtor as alleged by the Appellant, and the Ex-Promoters of the Corporate Debtor have virtually abandoned the project. The Appellant has also brought to our notice that they have taken lot of initiative including filing of FIR against the Promoters.

25. During pleading before us, the Appellant stated that this Appellate Tribunal in connected case i.e., Comp. App. (AT) (Ins.) No. 1410 of 2022 has given the stay on the constitution of the CoC vide order dated 28.11.2022. At this stage, we take into consideration order dated 28.11.2022 of Comp. App. (AT) (Ins.) No. 1410 of 2022 which reads as under :-

“This Appeal has been filed by the Suspended Director of the Corporate Debtor against the Order dated 11.11.2022 initiating ‘Corporate Insolvency Resolution Process’ (CIRP in short) against the Corporate Debtor who is Real Estate Developer. It is submitted by Learned Counsel for the Appellant that 95% of the Project is complete and the Corporate Debtor has only one project.

2. I.A. No. 4423 of 2022 has been filed by Lotus 300 Apartment Owners’ Association seeking intervention in Impleadment. It is submitted on behalf of Applicant that 99% of the project is complete and the home-buyers themselves are investing their money for completion of the project.

3. Learned Counsel for the Bank submits that no concrete proposal was submitted on behalf of the Appellant for taking care of the debt of the Bank hence the Order admitting CIRP be maintained.

4. After hearing the parties and having perused the record, we are, in the facts of the present case, of the view that ends of justice will be served in directing that Committee of Creditors be not constituted in pursuance of the Order dated 11.11.2022 till further orders.

5. Issue notice. Learned Counsel appearing for the Resolution Professional, who is present, may file 'Status-Report' within three weeks. Learned Counsel appearing for the Respondent (Financial Institution) may also file Reply-Affidavit, within three weeks.

6. Learned Counsel for the Applicant submits that they have also filed the Appeal challenging the Order dated 11.11.2022 vide diary no. 41421/2022. Impleadment Application I.A. No. 4423/2022 is allowed. Let Applicant be impleaded as one of the Respondents (Respondent No. 3) to the Appeal.

7. On-going project may go on with due information of every step including accounts to the Resolution Professional. All concerned may cooperate in ongoing project.

List this Appeal on 13th January, 2023."

(Emphasis Supplied)

26. From above, we note that this Appellate Tribunal earlier gave partial relief to the extent that ongoing project may continue by the Promoters with information being submitted to the Resolution Professional. However, there is no specific mention about the role of the Appellant herein, who were allowed in that case for intervention. This resulted in stay since CoC was not allowed to be constituted but protection of Section 14 was allowed. In this background, we are

not clear as what is the rational for such reliefs being sought by the Appellant as mentioned in Para 22. It needs to be appreciated that if CIRP continues, the Resolution Professional has to perform his role in accordance with provisions of the Code and Regulations. It is also not clear how the Appellant can directly be permitted to complete the project by passing the Suspended Director of the Corporate Debtor and/or the Resolution Professional. We note that the Appellant submitted that they have stake of around 98% in CoC, as such in any case, the Appellant has absolute dominance in CoC. We are of opinion that the project can continue to be completed by Resolution Professional under advise/ directions of the CoC in accordance with the provisions of Code and Regulations, during the period CIRP goes on.

27. We also note that the Financial Creditor/ Respondent No. 1 has opposed the appeal and stated that the Impugned Order has been correctly passed in CP (IB) No. 419 (ND)/2022. The appeal was filed by the Respondent No. 1 who is a Financial Creditor of the Corporate Debtor against the Corporate Debtor and defence of the Corporate Debtor was that the Corporate Debtor is a viable company and is covered by the ratio of *Vidarbha Industries Power Ltd. (Supra)*.

28. In this connection, we take into consideration the relevant portion of the Impugned Order which reads as under :-

“9. The Respondent has emphasized that it is a healthy and financially viable company, since it has almost completed the Project and the initiation of CIRP of such a company will not

be fruitful. Had the company been a financially sound entity, it would not have defaulted in payment of its dues to the Applicant Bank. Hence, in our view, the completion of a Project cannot be the sole parameter to judge the overall health and viability of a company.

10. It is further contented by the Respondent that initiation of CIRP will prove to be a death knell of the company. In our view, any company which is admitted into the CIRP is attempted to be revived/ resolved first and mere admission of a company into CIRP does not directly result in its instant liquidation or dissolution under the Scheme of IBC.

11. It is further contended by the Respondent that a security/comfort letter amounting to Rs. 20 Crore has been issued by a Company namely, Three C Residency Private Limited (third party) in lieu of the outstanding dues of the Respondent. However, the Applicant, through its rejoinder, has shown no confidence in that undertaking and has considered it only a speculative undertaking.

12. We further observe that despite the claim of selling the most of the units (301 out of the 330 units as pleaded by the Respondent in its Reply) in the Project, the Respondent has failed to repay its financial debt, therefore, there is no exceptional case made out whereby despite default, the CIRP shall not be initiated against the Respondent.

(Emphasis Supplied)

29. We observe that the Adjudicating Authority has gone into facts and law including **Vidarbha Industries Power Ltd.(Supra)** and came into conclusion that there was a debt and default and CIRP had to be initiated and ordered accordingly.

30. The Respondent No. 1 has stated that the debt and default still continues and therefore there is no need for any interference in the Impugned Order by this Appellate Tribunal, therefore, the Appellant's appeal is not justified.

31. We have already taken into consideration the reliefs sought by the Appellant that the Appellant/ Lotus 300 Apartment Owners Association be permitted to complete the project without any interference from the Resolution Professional and the Resolution Professional should be restrained from taking over the project and further the Corporate Debtor should be allowed to continue as a going concern. The Appellant has also seeking directions from this Appellate Tribunal that steps should be taken by the Resolution Professional and the Corporate Debtor to execute necessary sale deeds in favour of the members of the Appellant i.e., homebuyers. The Appellant requested this Appellate Tribunal to keep CIRP in abeyance.

32. We consciously note that although there was stay on constitution of CoC vide this Appellate Tribunal order dated 28.11.2022 in Comp. App. (AT) (Ins.) No. 1410 of 2022, however, we do not find any order or submissions by the Appellant to clarify the capacity in which they have been executing the work by way of operation of stay. It is the Corporate Debtor who was supposed to execute the work with furnishing the accounts to the Resolution Professional, which has not been done.

33. We have already heard connected appeal filed before this Appellate Tribunal bearing Comp. App. (AT) (Ins.) No. 1410 of 2022, which has been

dismissed by us in separate order, resulting in automatic vacation of stay granted in that appeal.

34. We may have sympathy and empathy with the homebuyers who has invested their money as Homebuyers and large majority of flats owners have also occupied the flats, but we are bound by provisions of the Code and Regulations. The reliefs sought by the Appellant are not covered by any provisions of the Code and Regulations and therefore, cannot be accepted. We note that there is no direct stay granted in the present appeal. Having said so, it is for CoC to decide the future fate of the project and the Appellant being in control of 98% of the CoC as claimed by the Appellant before us, can easily guide the Resolution Professional to complete the project. In fact, during the CIRP, the Corporate Debtor is given all protection of Section 14 of the Code. The other relief of the Appellant are of similar nature. It need to be appreciated that if CIRP continues, the Resolution Professional need to perform its role. Also, we need to appreciate that in addition to the Appellant (members Homebuyers), the Respondent No. 1 is also Financial Creditor and Respondent No. 1 as other Financial Creditor has right to participate in CoC. The pleading made by the Appellant is not legal or ethical and cannot be accepted.

35. It is noted that the CoC shall constitute primarily with all the homebuyers as a class who are stated to be predominate in the composition of CoC with the Respondent No. 1. It is for CoC to decide the future course of action and needless to say the Resolution Professional is supposed to act in accordance with the Code

and the relevant regulations under the advise and directions to the CoC. We also note that the Appellant has stated that 99% project is already completed, hence, we feel that the remaining work as indeed may also be completed by the CoC through Resolution Professional in accordance with law.

36. We also do not find any merit in the contentions of the reliefs sought by the Appellant that we should give directions to the Corporate Debtor and Resolution Professional for registration of sale deeds. We feel that it is for the concerned authorities like NOIDA Authority to do so in accordance with the law and the Appellants are free to approach them in accordance with the relevant laws and various judicial pronouncement if applicable.

37. The appellant also brought to our notice that the Hon'ble Allahabad High Court had passed certain strictness against the Respondent No. 1 in one different case and against which the Respondent No. 1 has gone in the appeal to the Hon'ble Supreme Court of India and the case is still pending before the Apex Court. On this point, we note that from the pleadings of the Respondent No. 1 that the pending case in the Apex Court has got nothing to do with the present appeal, as that is entirely different matter and not connected with the Impugned Order. We tend to agree with the logic of the Respondent No. 1.

38. In conclusion, we do not find any merit in the contentions of the Appellant that the CIRP should be kept in abeyance, however, neither Promoters nor Resolution Professional should be allowed to interfere in CIRP and only Appellant should be allowed to complete the project.

39. We do not wish to look into the contention of the appellant regarding alleged involvement of the Respondent No. 1, who according to the Appellant has acted in collusion with the Promoters of the Corporate Debtor. In any case, this is a subject matter which is pending before the Hon'ble Supreme Court of India.

40. In fine, we are not convinced with the arguments of the Appellant. We do not find any error in the Impugned Order. The Appeal devoid of any merit stand rejected. No cost. I.A., if any, are closed.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indavar Pandey]
Member (Technical)

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