NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

19.08.2026

Present: JUSTICE SHARAD KUMAR SHARMA, MEMBER (JUDICIAL)

INDEVAR PANDEY, MEMBER (TECHNICAL)

Comp. App (AT) (Ins) No. 13 of 2024

&

I.A. No. 1108 of 2024, 4424, 4525 of 2026

(Arising out of Order dated *06.10.2023* passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench *IV in ZA-2374/21 in CP (IB) 4469 (MB) 2019.*

IN THE MATTER OF:

UTI Employees Sai Samruddhi Co-operative Housing Society ...Appellant
Versus

Jayesh Sangharajka (RP-Ornate Spaces Pvt. Ltd.) & Ors. ...Respondent

Present:

For Appellant : Mr. Rajender Mishra, Mr. Sumit Chander, Ms. Sonakshi Chaturvedi, Advocates.

For Respondent : Mr. Akshay Chandra, Mr. Raj Kapoor, Mr. Anand Kumar Rai, Advocates for Intervenor (in IA No.4424 & 4425 of 2026 along with Applicant in person).
Mr. Harish Gulati, Advocate for Intervenor.
Mr. Puneet Singh Bindra, Mr. Rishabh Gupta, Mr. Chandra Raj Singh Chouhan, Ms. Charu Modi, Ms. Kriti Dang, Mr. Devang Gupta, Advocates for SRA/R2/Non applicant.
Adv. Tishampati Sen, Mr. Ashish Parwani, Adv. Riddhi Sancheti, Mr. Dikshat Mehra, Ms. Gitika Makhija, Advocates for R1.

J U D G M E N T

Per Justice Sharad Kumar Sharma Member (Judicial)

1. This is a batch of 3 company appeals.

2. By virtue of this order, which is being passed by us today it would be pertaining to an Interlocutory Application, being I.A. *No. 4424/2026,* as preferred in *Comp. App. (AT) (Ins) N0. 13 of 2024*. Hence, we would be factually dealing with the issue as involved consideration in *Comp. App. (AT) (Ins*) *No. 13 of 2024.*

3. Briefly stated the Appellant who treats itself to be a society registered under the relevant Societies Registration Act, has alleged that its an allottee of the land parcel of at Oshiwara, Mumbai, which was assigned to them by Maharashtra Housing & Area Development Authority (in short MHADA), to construct tenements for the benefit of society members. Accordingly, the Appellant contends that, they were granted liberty to place their objection to the Resolution Plan by the Tribunal by an order that was passed on 02.06.2023. In the matters pertaining to the UTI Employees Sai Samruddhi Co-operative Housing Society Vs. Jayesh Sangharajka & Ors. Consequently, in pursuance to the order which was passed by this Tribunal, the Appellant had sent an e-mail communication of 16.06.2023, to the Registrar NCLT Mumbai Bench, updating its office regards the details, by online filing of the objection to the Resolution Plan.

4. The Appellant's grievance had been that the mail thus send was not responded, nor the Appellant society has been recognised to have objected to the Resolution Plan. Consequently, an order was passed on 06.10.2023 rejecting the objection, to the approved Resolution Plan, because the objection of the Appellant society could not be placed before the Adjudicating Authority, hence the Instant Company Appeal.

5. The impugned order under challenge in the Instant Company Appeal, at the behest of the Appellant is, while involving its Appellate jurisdiction under Section 61(1) of I&B Code. The Appellant's contention had been that, their objection which was sent through its e-mail communication on 16.06.2023 to the Registry of the NCLT, Mumbai, for updating the details of the application, bearing I*.A. No. 2374/2021* filed for the approval of the plan that, may be considered, but on the contrary the adjudicating authority had proceeded to pass the impugned order on 06.10.2023 approving the plan and consequentially issued directions that the plan of the applicant may be proceeded to be enforced as per law. This order has been subjected to challenge in the Instant Company Appeal.

6. Its that during the pendency of this appeal, an application has been preferred by one, Mr. Harish Gulati, claiming himself to be the Homebuyer. The said I.A. was numbered as, I.A. No. 4424/2026 wherein in the application as preferred by Mr. Harish Gulati, he had submitted that, he deserves to be impleaded in the proceedings of the appeal, as his rights are likely to be affected because he contends to have paid an amount of Rs. 2.4 crores as consideration for the purchase of the flat Bearing No. *1504*. In the application as preferred precisely the grounds taken by the Applicant Harish Gulati, had been that the flat which was thus booked by him on 14.12.2018 that, is Flat No. 1504 which was measuring 1921 sq. ft was situated on the 15th floor of the Grove Towers along with 2 car parking spaces, in the project called as Ornate Spaces Pvt. Ltd. He alleges have remitted Rs. 2,63,46,154/-, upon which, it was pleaded that the possession was handed over on 30.11.2023.

7. In the application thus preferred by the applicant he projected the grounds that he deserves to be impleaded because of the fact that, he has invested a sufficient amount, as it would be reflected from the books of account of the

Corporate Debtor. Besides, that since the RP has acted without transparency, and no information has been parted to the applicant, despite his e-mail communications and letters to the RP, he becomes the necessary party to be impleaded. Besides that a very peculiar ground has been raised by the applicant Harish Gulati, observing thereof that the knowledge of the proceedings was only attributed to him from the e-mail of the Successful Resolution Applicant dated 04.02.2026. However, this contention raised by the Applicant/Intervener of according of knowledge to her by the email communication, that cannot be acceptable to us for the reason being that the entire process has been taken after resorting to the process as contemplated under *Rule 6* of carrying out the wide publication, inviting the claims and even if thereafter the applicant has not responded to it. He himself has to blame himself, for the reason that it is an admitted case of the Applicant that the Appellant had never raised any claim during the course of the CIRP.

8. The allegations of malafide on part of the RP and SRA for using platform of IBC as a tool to siphon off the fund of the genuine Homebuyers cannot be accepted by us for the reason, being that as per the pleadings and documents that has been placed on record, the appellant had never submitted any claim within the time frame as prescribed under law and as such the applicant now at least cannot be permitted to rejuvenate his claim by seeking his impleadment in the Instant Appeal, as against Impugned Order of *06.10.2023*, which was confined to the approval of the plan. In any such order, which is under challenge in an Appeal, where the plan has been approved, no such party to the proceedings who alleges to be effected can be permitted to be, impleaded in whatsoever capacity it may be if the applicant himself has not raised any objection or a claim at the relevant stage of the proceedings when the CIRP process was being carried or even before the liquidator.

9. After having heard the Learned Counsel for the Applicant and particularly in context of the ground those have been taken in the application, it had been on the ground that he did not had any knowledge with regards to the CIRP process, hence, he could not project his case by filing of a claim within an appropriate time as contemplated under law. It is alleged by the applicant without any material on record, that when he made the enquiries about the status of this plan. It is at the time of delivery of possession which was due on 30.11.2023 that the applicant alleges to have discovered the initiation of the CIRP process that was initiated against the Corporate Debtor, as back in 2020.

10. If we also look into the grounds taken by the Applicant in his application to justify his intervention, in fact all the grounds that has been taken by him pertain to the knowledge of the CIRP Process. His inability in participating in the proceedings earlier cannot be accepted by us for the reason being that the Appellant's intervention has been exclusively confined on the ground that he happens to be the purchaser in the component of the development, meaning he purchased the flat from the Corporate Debtor. The legal status of the applicant cannot be treated to have been crystallised as a determined buyer, as no material right in relation to the property stood created in his favour for the reason being that the payment made towards Flat No. 1504, it was under a separate and an independent agreement with the Corporate Debtor, in which the Appellant society was never a party. If at all any right of intervener had matured to be considered that, could be only when upon completion of the construction and at the stage of the handing over the possession to the Appellant society. Thus the very pre-conditions remains unfulfilled, which could justify the Applicant to be made as a party to the Instant Company Appeal.

11. Besides if we look into the records, the Company Appeal was preferred by filing the same before the Registry of this Tribunal on *09.11.2023*. The Intervention Application, itself was filed by the Appellant only on *29.06.2026* at a very belated stage and that too without there being any cause of action existing in his favour or even pleaded in the application. The reason being that the applicant himself has accepted the propriety of the order dated *06.10.2023* of approving the Resolution Plan, having not drawn any appropriate proceedings seeking to set aside the approved plan, it modification or remand. Besides that, because of much what has thrown on board due to Pre CIRP Invocation of Bank Guarantee, the Appellant society has validly invoked the bank guarantee against the Corporate Debtor, prior to the initiation of the CIRP Process. Thus, on an overall scrutiny, what is being intended by the applicant to overcome and to override the effect of the implication of non-filing of the claim, by seeking it to be considered at this stage by seeking impleadment, when the Instant Company Appeal has been preferred against the order of the approval of the plan. All the issues pertaining to the status of the money received by the Appellant pre CIRP, invocation of Bank guarantee; illegality in the constitution of the COC, alleged by the applicant to be premised on forged documents. All these aspects at this stage cannot be ventured into under the garb of impleadment for the reason, that the Applicant at no point of time had been a party to the proceedings before the Ld. Adjudicating Authority and had made no representation of any kind before the Ld. NCLT and it was rather for the first time that the introduction into the proceedings has been sought by filing of I.A. No. 4424/2026, which would not be permissible to introduce an alien in the proceedings, who has been otherwise ousted by operation of law.

12. Even, if the pleadings of the Intervention Application are taken into consideration, they are structurally different from and absolutely unrelated to the reliefs sought in the present appeal as preferred against the order of approval of the

plan. Looking to the vertebra of the appeal and the question involved consideration therein, the applicant's effort of filing of an Intervention Application its exclusively confined for adjudication of his status as a Homebuyer and for the recognition of the payments made by him to the Corporate Debtor, the relief concerning therein was exclusively contractual right in respect to the allotted accommodation. Since none of the issues were under consideration and from part of the appeal nor was a subject matter requiring consideration to the controversy under consideration in the impugned order. It would amount to that the intervention by the applicant was nothing, but an attempt to introduce a new cause of action in a pending appeal which is not relevant for deciding the appeal, which is pending against the approval of the Resolution Plan and more importantly particularly when it aims to overcome the affect of non-filing of the claim by the applicant at the appropriate stage of proceedings for consideration of the claims.

13. So far as the alleged theory of knowledge is concerned, the Learned Counsel for the Respondent/applicant had drawn our attention to the various communications placed on record of the intervention application, as filed by the applicant in support of *I.A. No. 4424/2026*, which itself shows that, the applicant did have the knowledge of the CIRP proceedings even much prior in time. He had still chosen not to participate in the proceedings, before the Ld. Adjudicating Authority or even before the Resolution Professional by filing of a claim and having not done so, the Applicant by way of present Intervention Application cannot be permitted to reap the benefits of his own inactions and inabilities because of act of waiver, and to override the effect and the consequences flowing because of non-filing of the claim by the Appellant. If we look into the entire controversy so far as the argument extended by the Learned Counsel for the Applicant, with regard to the non-compliance of the provisions contained under Regulation 6 of CIRP as regards to the modalities to be adopted for service of notice the said argument

cannot be accepted by us for the reason being that after issuing up valid publication which is an intimation in public domain, the claims have been invited, considered and since the applicant had chosen not to file any claim, he cannot now at this stage come forward and say that the notices were not validly issued as per Regulation 6 of the CIRP Regulations, which could at all justify the impleadment of the applicant in the proceedings of the instant Company Appeal, as against the challenge to the order of approval of the plan and the rejection of the objection to the approval of the Resolution Plan. Because of the fact that there is no established privity of contract between the parties and the applicant, hence the principles of Order 1 Rule 10 of CPC, too will not apply to be attracted, because even in the absence of the applicant being made as a party to the proceedings of appeal still the appellate proceedings could be effectively decided on its own merit. Hence, he is not a necessary or an essential party to the proceedings and rather the Applicant in a clandestine way intends to override the effect of non-filing of his claim at the appropriate time attempting to override its effect , now by seeking an intervention in the proceedings, which he cannot be permitted to take an advantage for the reason, being that the applicant cannot be permitted to do an act indirectly, which he could have otherwise resorted to by known and a reckoned a direct mode but was not availed by the Appellant.

14. The attribution of knowledge to the applicant is apparent from his e-mail communication of 22.11.2025 and having sat over it till filing of an application for impleadment in the instant Company Appeal is highly belated action taken by the Appellant with a malicious intent and with an attempt to rejuvenate the proceedings, which otherwise under law he has not availed within an appropriate time as contemplated under law. The sole motive of the applicant, in accordance with the application preferred by the appellant for taking additional documents on record in support of the Intervention Application to demonstrate that as far as his

own case was to somehow sustained his claim, which as per the impression created by the Appellant would assist in a better adjudication of the Instant company Appeal.

15. Owing to the above grounds, we could summarise the controversy from following perspectives that, since in the Appellate proceedings, the adjudication would be confined to the propriety of the order under challenge. There cannot be an introduction of a new case altogether and that too by belated impleadment. Since admittedly, the applicant was not a party to the proceedings before the Ld. Adjudication Authority and because of the fact that no rights of the applicant have been adjudicated upon by the forum below, whose order is under challenge, a fresh claim or a fresh right cannot be permitted to be agitated for the first time.

16. Because of the fact that the applicant has not filed any claim or objection, or even intervention before the Adjudicating Authority i.e. the Ld. NCLT Mumbai, it will amount to be an acquiesce of all his rights, right from the original stage of the proceedings and there cannot a resurrection of the rights by way of filing of an Intervention Application. Looking to the entire controversy in context of the grounds taken by the applicant in his Intervention Application, the applicant is not directly affected by any order to be passed in the instant company appeal, against the aspects pertaining to the approval of the plan. We are of the view that, if at all there is any independent right or the cause of action still subsisting for the applicant, the remedy for the applicant would have been to agitate a separate substantive proceedings at an appropriate forum available to him under law and not by way of Intervention Application, in an appeal where the questions of approval of the plan has been challenged.

17. Since the Impleadment Application articulatively intends to enlarge the scope of the lis by introducing new collateral and an unnatural cause of action, the same

cannot be permitted. Even otherwise, the principles of dominus litis - a master to the appeal or the suit proceeding is entitled define his own controversy and choose his party against whom the relief is sought and in that eventuality an introduction cannot be sought to be made by way of an Intervention Application because it is the appellants prerogative who would choose his opposite parties for enforcement of a right or to compel a litigation to be carried.

18. Because of the above facts, since the appellant has failed to justify the test of he being the necessary or even the proper party for the purposes of deciding the Instant Company Appeal, against the approval of plan, his intervention is not as a necessary party. Because of the fact that a necessary person or a party to the proceedings would be in whose absence the effective adjudication cannot be made. The applicant himself has waived off his rights since having not resorted to his remedies of raising a claim at an appropriate time. Because of the above reasons, the individual Homebuyer, the applicant Mr. Harish Gulati, cannot be permitted to intervene in the appeal preferred as against the approval of the Resolution Plan. Hence I*.A. No. 4424/202*6 and *I.A. No. 4525/2026* placing additional documents on record in support of *I.A. No. 4424/2026* would stand rejected.

19. List on **22.09.2026**.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

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