

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 549 of 2025

IN THE MATTER OF:

HDFC Bank Ltd

...Appellant

Versus

Atul Kumar Kansal & Ors.

...Respondents

Present:

For Appellant : Mr. Gaurav Mitra, Mr. Dhruv Gupta, Ms. Arushi and Ms. Jasveen Kaur, Advocates

For Respondent : Mr. Swapnil Gupta, Mr. Vaibhav Mendiratta, Mr. Sajal Jain, Mr. Harshit Gupta and Mr. Tarun Mishra, Advocates for RP/R-1.
Mr. Himanshu Kapoor and Mr. Harshal, Advocates for R-2/SRA.
Mr. Rahul Malhotra, Advocate for R-3.

O R D E R
(Hybrid Mode)

08.04.2025 Heard Learned Counsel for the Appellant as well as Learned Counsel for the Respondent. This Appeal has been filed against an order dated 07.03.2025 by which order Adjudicating Authority has considered and rejected the objection filed by I.A. No. 3778 of 2022 by the HDFC Bank. The Appellant's case is that Appellant has mortgage with units having super areas 8702 sq. ft. at sixth floor of Universal Business Park, with regard to which conveyance deed was executed in favour of M/s Nayanika Holdings Pvt Ltd on 14.10.2015. It is submitted that the Appellant having mortgage over the said units, the said unit could not be made part of the resolution plan and the only prayer of the Appellant is that the said unit be excluded from the resolution plan.

Learned Counsel for the Respondent submits that in the present case, the plan was earlier approved by the Adjudicating Authority in 2021 and matter was remitted to the Committee of Creditors for consideration of claim of certain Financial Creditor including Kotak Mahindra Bank Ltd. Subsequently, after the said plan has been approved. It is submitted that Appellant has no locus to file any objection.

Learned Counsel for the Respondent submits that the remittance by the Adjudicating Authority was limited to be purpose of the consideration of the claim of Financial Creditor and thereafter the plan was approved. We have considered submission of the Appellant and perused the record.

Appellant claims having mortgage rights on the units which was sold to M/s Nayanika Holdings Pvt Ltd on 14.10.2015. The conveyance deed which was executed, there was no Tripartite Agreement between the Corporate Debtor M/s Nayanika Holdings Pvt Ltd and the bank. The agreement which is the basis of the claim is the loan agreement executed by M/s Nayanika Holdings Pvt Ltd in favour of the HDFC Bank. The Adjudicating Authority in paragraph 26 of the order has made following observations:

“...

26. As can be seen from the aforesaid documents enclosed by the Applicant Bank with the IA, the loan agreement as well as the document recording the mortgaging of the unit no. 618-626 located at 6th Floor of Universal Business Park was executed between the Applicant Bank and Nayanika Holdings, and was not a tripartite agreement involving the Corporate Debtor. Apparently, as per the stand taken by Applicant itself,

it is not open for this Tribunal to determine the disputed issue between the Applicant and Nayanika Holdings. It is for the Applicant to resort to the remedy available to it before the appropriate forum in accordance with law to seek its relief. We find merit in the contention of the RP that the Applicant Bank has no locus to object to a resolution plan which already stands approved by the CoC. Furthermore, as already noted in the order dated 11.06.2021 of this court, no other issue would be raised by any objector nor decided by CoC. In the wake, I.A. 3778/2022 stands dismissed.”

The Appellant when is not the unit holder or any rights in the units except the mortgage right cannot be heard in asking to exclude the unit. When the units were taken consideration in the resolution plan and resolution plan was approved by the unit holders, who either had conveyance deed or builder buyer's agreement. The Adjudicating Authority has rightly observed that the Applicant bank has no locus to object to the resolution plan which already stand approved by the Committee of Creditors. The Adjudicating Authority has also noticed that by an earlier dated 11.06.2021 of Adjudicating Authority, no other issues were allowed to be raised by an objector apart from claim of Financial Creditors. We thus, are of the view that remedy of the Appellant is against the M/s Nayanika Holdings Pvt Ltd with whom loan agreement was executed by deposit the title deed. The Appellant cannot raise any objection in the resolution plan or with regard to unit. We do not find any error in the order of Adjudicating Authority, rejecting the application.

However, this shall not preclude the Appellant to take such remedy in law as permissible against the M/s Nayanika Holdings Pvt Ltd.

The Appellant has also relied on judgment of this Tribunal in ***Deepak Sakharam Kulkarni vs. Manoj Kumar Agarwal in 2024 SCC OnLine 2562***, he is relied on paragraph 176 and 218. The observations made by this Court, was in respect of the person who was claiming right in the units and those units were included in the plan to which the Corporate Debtor had no rights, in the above background the observations in paragraph 176 and 218 has been made and the said judgment does not come to the aid of the Appellant in the facts of the present case.

The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

pks/nn