



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-III

IA-1006/2024
In
IB-654(PB)/2019

IN THE MATTER OF IB-654(PB)/2019:

VISHAL FABRICS & ORS.

.... FINANCIAL CREDITORS

VERSUS

M/s AVJ DEVELOPERS (INDIA) PVT. LTD.

.... CORPORATE DEBTOR

AND IN THE MATTER OF IA-1006/2024:

BANK OF BARODA

Through its Authorized Representative Mr. Anirudh Sharma.

Having its Head Office at:

7th Floor, Baroda Bhavan, R. C. Dutt Road, Vadodara- 390007.

Having Branch Office at:

ROSARB, 4th Floor, Rajender Bhawan, Rajender Place, New Delhi-110008.

..... APPLICANT BANK

VERSUS

MR. VIVEK KUMAR

(Resolution Professional of AVJ Developers (India) Pvt. Ltd.

R/o C-604, Rosewood Apartments,

Mayur Vihar-I, Ext., New Delhi-110091.

.....RESPONDENT

Order Pronounced On: 14.11.2025

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. Sougat Sinha, Adv.

For Respondent : Mr. Saurabh Kalia, Ms. Mani Gupta, Mr. Aman
Choudhary, Advs. Mr. Vivek Kumar (RP)



ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. I have the advantage of going through the order authored by my Learned Brother Member (J). I have perused the comprehensive order and with utmost respect to the views expressed by my learned brother on the Bench, I find myself unable to concur with the opinion.
2. The present Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 by the Applicant/Bank of Baroda seeking a direction to the Respondent/Resolution Professional to accept the claims of the Applicant and to secure the assets charged to the Bank.
3. It is the case of the Applicant that the Applicant Bank filed its claim on 29.12.2022, vide six separate claim forms filed its claim as a Financial Creditor for an amount of Rs. 3,07,71,916.55/- (Rupees Three Crore Seven Lacs One Thousand Nine Hundred Sixteen and Fifty Five Paise), with respect to the amounts disbursed for allotment of units to homebuyers in the Project. The claims relate to the flats bearing flat nos. D-1007, K-1805, K-1807, B- 1701, A-1907, A-2104.
4. It is submitted that the Respondent/Resolution Professional vide email dated 28.04.2023 rejected the claim of Applicant on two grounds as mentioned below:
 - (i) That the last date of submission of claim expired on 07.10.2021, and
 - (ii) That, an Application bearing No. IA 5385/2021 has been filed under section 30(6) of the IBC, 2016 before the Hon'ble NCLT for approval of the Resolution Plan.
5. It is submitted by the Applicant that under Clause 3(c) of these Tripartite Agreements, the obligations of the Corporate Debtor are clearly defined, and the terms are binding on the Corporate Debtor, the Resolution Professional, and the Successful Resolution Applicant, who cannot alter or dilute the Bank's rights. The Corporate Debtor agreed that in case of delay or failure to execute the sale deed or deliver possession within 365 days from the final



disbursement, the Bank may take all necessary steps to obtain the sale deed or possession in its own favour. The builder must refund all disbursed amounts with accrued and penal interest if it fails to execute the sale deed or if litigation affects the property. Similarly, if the borrower fails to pay the margin money, the builder must refund the Bank's entire disbursed amount with interest. The builder is also obligated to obtain the completion certificate and cannot hand over possession or execute the conveyance deed to the borrower without the Bank's consent.

6. The Applicant Bank relies upon the Clause 3(c) and (e) of the Tripartite Agreement dated 18.06.2015 which are reproduced as under: -

“c. The Builder undertakes to provide the original, executed, duly stamped and registered agreement for sale original registration receipt and letter of authority from Sub-registrar and/or sale deed in favour of the Borrower(s) within a period not exceeding 365 days from the date of final disbursement of the loan to the Builder by the Bank. The Builder shall ensure that effective security is created in favour of the Bank in the manner prescribed by the Bank. In the event of failure of the above or in event of any litigation affecting the said property, the Builder shall promptly and immediately refund all the monies disbursed by the Bank together with interest at the rate accrued on such loans including penal interest applicable thereon.

In the event, the Borrower(s) requests for cancellation of the allotment/ Agreement for sale, the Builder shall obtain Bank's prior written No Objection Certificate as also remit the loan amount disbursed by the Bank with interest at the rate accrued on such loan including penal interest applicable thereon from the proceeds of the cancellation of Agreement to sale and remit the same directly to the Bank by Banker's Cheque or Demand Draft, favouring the Bank for credit to the Borrower(s) Home loan account and to remit the residual



amount to the Borrower/shall arrange to refund the proceed of cancellation of Agreement to sale directly to the Bank under advice to the borrower. If the Borrower(s) fails to pay his stipulated margin amount, the entire amount advanced by the Bank will be refunded by the Builder to the Bank, together with interest due including penal interest, if any. The Builder undertakes to obtain completion certificate and certificate of occupation issued by the Competent Authority in respect of the property and also undertakes that Builder shall not hand over the possession/conveyance deed of the property to the Borrower(s) without the prior written permission of the Bank. The Builder agrees/undertakes and confirms to obtain such written consent from the Bank.

e. The Builder hereby undertakes to issue a letter favouring the Bank inter-alia, giving its No Objection for the Borrower(s) creating security in favour of the Bank, by way of mortgage, of the right, title, interest of the Bank in the shares allotted to him/her/them and of the said flat for repayment of the loan and all amounts in respect thereof by the Borrower(s), to note the charge of the Bank on the said flat(s) in its records as security against the Loan advanced by the Bank to the Borrower(s) and not to permit the Borrower(s) to transfer/encumber the said property, without prior written permission of the Bank. The Builder hereby irrevocably and unconditionally guarantees the due repayment to the Bank of all the amounts disbursed to the Builder together with all interests and all other monies, owing and payable by the Borrower's to the Bank, in the event of any breach by the builder of any warranty, representation covenant, or agreement contained herein.

- 7.** The Ld. Counsel for the Applicant Bank submitted that since the Corporate Debtor failed to provide original sale deed in favour of the Borrower and/or



create any security in favour of the Bank in absence of registered sale deed, the Corporate Debtor is liable to repay the debt in terms of the irrevocable and unconditional guarantee provided in the clauses above. Therefore, the Applicant Bank assumes the character of the Financial Creditor in terms of Section 5(8) of the Code.

8. The Ld. Counsel for the Applicant placed reliance upon the Order dated 09.01.2025 in the case of Canara Bank vs. Sh. Vivek Kumar, Resolution Professional of M/s AVJ Developers (India) Private Limited, Comp. App. (AT)(Ins) 390 of 2023, wherein the Hon'ble NCLAT referred to Clause 16 of the Tripartite Agreement executed by Canara Bank, the Corporate Debtors and the Allottees therein, to hold that there is a clear obligation to repay upon the Corporate Debtor, albeit in the event of default. It is submitted that the said Clause 16 of the Tripartite Agreement is similar to the Clause 3 of the Tripartite Agreement executed by Bank of Baroda to the extent it captures the obligation of the Corporate Debtor to pay under crystalized events.
9. In reply, the Ld. Counsel for the Respondent/Resolution Professional submitted that the above clause applies only in the event of the failure of the builder to create a security in favour of the bank. Such an occasion would only arise after approval of the resolution plan as the builder (as Successful Resolution Applicant), would handover the possession of the flats to the homebuyers as per clause 6.11 of the Resolution Professional.
10. The Ld. Counsel for the Respondent/Resolution Professional submitted that Clause 4 of the Recital and Clause 2 of the Tripartite Agreement, makes it is clear that the loans were disbursed to the individual homebuyers and not the Corporate Debtor as per the law laid down by the Hon'ble Supreme Court in the case of ***Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) 8 SCC 416***. The relevant clause of the Tripartite Agreement are reproduced as under:

***“Clause 4 of the Recital to the Tripartite Agreement,
which state that the borrower authorised the Applicant to
disburse the loan amount directly to the Corporate Debtor and***



the sum advanced by the Applicant to the borrower and remitted by the Applicant directly to the Corporate Debtor shall be deemed as disbursed by the Applicant to the borrower.

Clause 2 of the Tripartite Agreement:

Obligations of the Borrower(s):

The Borrower(s) shall unconditionally consent for disbursement to the entire loan amount upfront/in instalments as per agreement for sale dated/allotment letter dated 27.05.2015 to the Builder on the basis of the demand notice issued by the Builder. The Borrower(s) will arrange to remit the margin amount directly to the Builder and furnish receipt issued by the Builder evidencing remittance of margin amount/will arrange to remit the margin amount to the credit of Home Loan Account to enable the Bank to pay the consolidated amount (margin and loan) directly to the Builder.

1. The Borrower(s) undertakes to create and complete the equitable mortgage formalities immediately on receipt of the conveyance/sale deed duly executed, stamped and registered.

2. The Borrower(s) shall execute all necessary loan documents at the time of sanction of Home Loan for purchase of the said property.

3. The Borrower(s) undertakes to liquidate the loan sanctioned to him on demand by the Bank regardless of the progress in construction/ completion of the project and indemnify the Bank for any loss occasioned on account of delay in construction of the house/flat in terms of the construction schedule in the Agreement for sale/Allotment letter by the Builder, including but limited to claims of the Bank for interest, penal interest, damages, costs, etc. on the outstanding amount of the loan extended to the said Borrower(s) by the Bank for purchase of flat/house in terms of construction schedule as



mentioned in the Agreement for Sale/Allotment letter dated 27.05.2015.”

Analysis and Findings

- 11.**In the Order dated 09.01.2025 in the case of Canara Bank vs. Sh. Vivek Kumar, Resolution Professional of M/s AVJ Developers (India) Private Limited, Comp. App. (AT)(Ins) 390 of 2023, the Hon’ble NCLAT referred to the Tripartite Agreement executed by Canara Bank, the Corporate Debtors and the Allottees therein, and held that there is a clear obligation to repay upon the Corporate Debtor in the event of default. The Hon’ble NCLAT in its order dated 09.01.2025 has given specific findings after detailed analysis that cannot be ignored. The operative portion states: *“We have examined both the cases in greater details in preceding paragraphs as well as legal provisions of the Code and various clauses of the agreement specially in contrast with provisions of the Tripartite Agreement of the present case vis-a-vis Value Infracon India Private Limited (Supra), as such we find that the Adjudicating Authority has erred in not considering the aspects brought out by the Appellant in the present appeal.”*
- 12.**The Hon’ble NCLAT concluded that *“In view of above detailed discussion, the appeal succeeds. The Impugned Order is set aside and IA No. 836/2023 in C.P. (IB) No. 654(PB)/2019 is restored to its original number and the matter is remanded back to the Tribunal for reassessment of the case, in accordance with law.”*
- 13.**Hon’ble NCLAT in order dated 9.1.2025 has taken the view that the Tripartite Agreement (TPA) is materially different from Value Infracon as it creates a direct liability on the Builder and has categorically recorded in Para 79 that *“...the Corporate Debtor/Builder has undertaken to refund the entire amount advanced by the Bank in case of event of default of repayment of the loan.”*
- 14.**The undisputed fact is that the Applicant Bank directly disbursed loan amounts to the Corporate Debtor/Builder, albeit on behalf of and on the instructions of the homebuyer and money reached the Corporate Debtor from the Bank.



- 15.** In this case also Clause 3(c) and (e) of the Tripartite Agreement provides that upon borrower's default or any specified event due to which the loan is not utilised for purchase of the flat, the entire amount advanced by the Bank shall be refunded by the Builder to the Bank. The TPA does not merely indemnify the Bank, it creates a direct contractual obligation upon the Corporate Debtor to refund the entire amount advanced by the Bank in case of specified defaults and upon the occurrence of specified events.
- 16.** Further the Borrower authorized the Bank to disburse loan to the Builder and the Builder undertook to refund all amounts disbursed in case of specified defaults. With these provisions in TPA the Bank steps into the shoes of the homebuyer upon disbursing funds and occurrence of defaults acquires the right to enforce the refund from the Builder. The agreement creates a structure where the homebuyer's receivable from the Builder is, by contract, assigned to the Bank to the extent of loan disbursed.
- 17.** The Corporate Debtor received funds from the Bank to complete the real estate project. The homebuyers obtained financing from the Bank to enable them to purchase units. The Tripartite Agreement was structured such that Builder would receive the funds directly from the Bank and the Corporate Debtor undertook a contractual obligation to refund the entire amount to the Bank in case of default or failure to complete the project. This arrangement clearly has the commercial effect of a borrowing with the home buyers as intermediaries within the meaning of Section 5(8)(f) of the Code.
- 18.** Section 5(8) requires disbursement against consideration for time value of money. In this case loan amounts were directly disbursed by the Bank to the Corporate Debtor for construction and the refund obligation carries interest. The terms of Clause 3(c) and (e) satisfies requirements of Section 5(8)(i) of guarantee and Section 5(8)(f) requirements of commercial effect of borrowing therefore, a financial debt exists. Bank's claim is a valid "Financial Debt" under Section 5(8) and the Bank acquires the status of a "Financial Creditor".



- 19.** The Homebuyer may have approached the Bank seeking the loan but this not this negate the fact that TPA creates a direct and primary obligation upon the Corporate Debtor to refund the loan amount to the Bank in case of occurrence of specified events. The initial genesis of the transaction does not negate the contractual obligation that was ultimately created in favour of the Bank against the Corporate Debtor. The Corporate Debtor entered into the Tripartite Agreement voluntarily, agreed to receive money directly from the Bank, and it agreed to undertake the obligation to refund this money in specified circumstances. The Resolution Plan itself recognizes this by providing for treatment of bank as Financial Creditor. If the Bank had no claim at all, there would be no need for such a provision in the Resolution Plan.
- 20.** In cases were the homebuyers who have not filed any claims, if the Bank's claim is rejected, there will be no claim admitted in respect of these accounts despite the Corporate Debtor having received the money. This would lead to a situation where the Corporate Debtor which has failed to complete the project, would escape liability for substantial amounts it received, simply because the homebuyers have not filed claims.
- 21.** Once the Appellate Tribunal in CA 390 of 2023 has determined that in case the Builder/Corporate Debtor expressly undertook the liability to refund the entire amount advanced by the Bank, it creates a direct financial obligation upon the Corporate Debtor to refund the amount back to the Bank. This Adjudicating Authority cannot return to the reasoning was rejected by the Hon'ble NCLAT in its Order dated 09.01.2025. In view of the findings of the Hon'ble NCLAT, the Bank's claim based upon the Clause 3(c) and (e) of the Tripartite Agreement qualifies as a Financial Debt as defined under Section 5(8) of the Code and must be admitted as such.
- 22.** In light of the above findings of Hon'ble NCLAT in CA 390 of 2023, the Ld. Bengaluru Bench in the case of Kotak Mahindra Bank v. Prasanna Kumar Rath & Ors., in IA-713/2024 vide Order dated 07.08.2025 came to the following findings: -



“4. We have heard the Learned Counsel for the Applicant and RP and gone through the material available on record. Apparently, the RP not considered the claim made by the Applicant on the basis of the decision in Axis Bank Vs Value Infracon India Pvt Ltd Case.

5. The Counsel during the course of hearing cited latest judgement of the Hon’ble NCLAT bearing Company Appeal (AT) (Ins.) No.390 of 2023 in the case of Canara Bank vs. Shri.Vivek Kumar and referred to Para-77 of the decision passed by the Hon’ble NCLAT. Para 77 to 80 of the judgment are extracted below:

“We have already taken into consideration that the Impugned Order rejected the claims of the Appellant mainly based on the judgment of the Hon’ble Supreme Court of India in the matter of Pioneer Urban Land (Supra) and this Appellate Tribunal in the case of Value Infracon India Private Limited (Supra). The Impugned Order passed by the Adjudicating Authority stated that the bank did not finance the Corporate Debtor and real financial creditors are the homebuyers and based on the judgment of this Appellate Tribunal Value Infracon India Private Limited (Supra) the Adjudicating Authority rejected the case of the Appellant.

78. We have examined both the cases in greater details in preceding paragraphs as well as legal provisions of the Code and various clauses of the Comp. App. (AT) (Ins.) No. 390 of 2023 agreement specially in contrast with provisions of the Tripartite Agreement of the present case vis- a vis Value Infracon India Private Limited (Supra), as such we find that the Adjudicating Authority has erred in not considering the aspects brought out by the Appellant in the present appeal.

79. The Appellant Bank has directly disbursed the amount to the Corporate Debtor/Builder, albeit, on behalf of the Borrowers/Homebuyers and in terms of the Tripartite Agreements amongst the Allottees, Builder and the Bank, the Corporate Debtor/ Builder has undertaken to refund the entire



amount advanced by the bank in case of event of default of repayment of loan.”

6. It is seen that in this case also there is a tripartite agreement between the Homebuyers, Corporate Debtor and PNB Housing Finance Limited which is placed at pages 329 to of the petition. Clause 7 of the Tripartite Agreement is reproduced below. As per Clause 7 of this Agreement and,

“7. That the Builder, in the event of default of repayment of loan by the Borrower shall on written intimation instructions of PNBHFL cancel the allotment of said property of the Borrower and refund the amount standing to the credit of borrowers in the books of developers account by PNBHFL directly to PNBHFL and the Builder shall have right to recover/forfeit the earnest money.” Further Clauses 7-14 lay down the undertaking given by the Builder.

7. Hence, the facts of this case are similar to the matter decided by the Hon’ble NCLAT in respect of the Tripartite Agreement and also considering the Clause 7 of the Agreement, It has to be held that the present Assignee namely the KOTAK MAHINDRA BANK has to be considered as a Finance Creditor in respect of the Amounts advanced by the then Assignor PNB Housing Finance Limited.

8. In view of the above Discussion, this present application is liable to be allowed. Accordingly, IA No.713 of 2024 is allowed with the following direction.

The Respondent No. 1 is directed to admit the claim of the Applicant as Financial Creditor replacing the Respondent No. 2 to No. 5 to the extent of the claim of the Applicant in accordance with the right of subrogation pursuant to the terms of Tri-partite Agreement and consequently reconstitute the Committee of Creditors by including the Applicant along with entitled voting share to the Applicant in the Committee of Creditors.



In View of this direction, separate orders on other prayers at a, b and c separately are not considered necessary.”

23. Further, the Ld. Delhi Bench-II in the case of Indian Bank v. Ansal Properties & Infrastructure Ltd. in IA-6224/2024 vide Order dated 25.04.2025 placing reliance on Hon’ble NCLAT’s Canara Bank Order directed the Successful Resolution Applicant and Resolution Professional to file an affidavit that the Resolution Plan would be implemented in due deference to the Hon’ble NCLAT’s judgment.

Conclusion

24. After careful consideration of the entire matter, including the specific directions of the Hon’ble Supreme Court and the detailed analysis by the Hon’ble NCLAT, we arrive at the following conclusions:

- (a) The Tripartite Agreement creates a direct and primary contractual obligation upon the Corporate Debtor/Builder to refund the entire loan amount to the Applicant Bank in case of various specified events.
- (b) This clause is fundamentally different from the corresponding clause in the Value Infracon case, where there was no such obligation of repayment by the Builder to the Bank.
- (c) The disbursement by the Bank directly to the Corporate Debtor, coupled with the Corporate Debtor’s undertaking to refund this amount, constitutes a transaction having the commercial effect of a borrowing within the meaning of Section 5(8)(f) of the IBC.
- (d) The fact that the initial loan agreement was between the Bank and the homebuyer does not negate the separate debt obligation created by TPA in favour of the Bank against the Corporate Debtor.
- (e) The Applicant Bank qualifies as a Financial Creditor of the Corporate Debtor under Section 5(7) read with Section 5(8) of the Insolvency and Bankruptcy Code, 2016.
- (f) The Resolution Plan itself recognizes banks deriving claims from Tripartite Agreements as financial creditors.



(g) The delay in filing the claim cannot be a ground for rejection when the Resolution Plan itself provides for filing of claims within 45 days of its approval and the Plan has not yet been approved.

To again reject the Bank's claim after the Hon'ble NCLAT's detailed analysis finding error in the earlier rejection would not be in accordance with the appellate directions and would frustrate the judicial process.

Order

- i. In view of the relevant clauses of the Tripartite Agreement, the findings of the Hon'ble NCLAT and the above mentioned Orders of the coordinate Benches i.e. Ld. Bengaluru Bench and Ld. New Delhi Bench-2, this Adjudicating Authority holds the Applicant Bank to be a Financial Creditor of the Corporate Debtor.
- ii. It is ordered that the Applicant Bank, be recognized as a Financial Creditor of the Corporate Debtor for all those cases where claim has not been filed by the Homebuyer and based on the contractual obligation created under the Tripartite Agreement, the Resolution Professional is directed to admit the claim of the Applicant Bank. Consequently, the Applicant is entitled to be treated as a Financial Creditor for all purposes of CIRP, including participation in the Committee of Creditors and distribution under the Resolution Plan.
- iii. This order does not prejudice the rights of homebuyers who may file their own claims. If any homebuyer in respect of whose loan the Bank's claim is admitted subsequently files a claim within the timeline provided in the Resolution Plan, the Resolution Professional shall examine such claim independently. In case of any overlap or duplication between the Bank's claim and a Homebuyer's claim in respect of the same unit, appropriate adjustments shall be made to avoid double counting, with priority given to the Homebuyers.
- iv. The present application stands allowed to the extent indicated above.

-Sd/-

(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)