

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1410 of 2022

&

I.A. No. 4402, 4403 of 2022 & 155 of 2023 & 7576 of 2024 & 1081 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:

Rajendra Kumar

Aged 31 years, S/o Arjun Ram

Having office at:

C-23, Greater Kailash Enclave Part-I,

South Delhi, New Delhi-110048.

...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.

Registered Office at:

2401, Gen Thimmayya Road,

(Cantontment) Pune- 411001.

...Respondent No. 1

2. Hacienda Projects Private Limited

Through the Interim Resolution Professional
(IRP)

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.

...Respondent No. 2

3. Lotus 300 Apartment Owners' Association

Through President
402, Tower 5, Lotus 300, GH 01/A,
Sector 107, Noida Uttar Pradesh – 201304.

...Respondent No. 3

Present

For Appellants: Mr. Lakshay Agarwal, Advocate.

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

Ms. Purni Gupta, Ms. Henna George & Ms. Sunidhi
Sah, Advocates for R3.

J U D G E M E N T

(28.05.2025)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present Company Appeal (AT) (Ins) No. 1410 of 2022 has been filed by the Appellant i.e. Rajendra Kumar, who is the ex-director of Hacienda Projects Pvt. Ltd. (**‘Corporate Debtor’**), 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. Lotus 300 Apartment Owners' Association (Intervenor), is the Respondent No. 3 herein

5. The Appellant submitted that the Corporate Debtor, Hacienda Projects Pvt. Ltd., is a financially viable entity undergoing a temporary phase of distress caused by circumstances beyond its control. The Lotus 300 Project, launched in July 2011 at Sector-107, Noida, faced significant delays due to protracted litigation over land acquisition. Between 2011 and 2014, the Hon'ble Allahabad High Court quashed notifications under the Land Acquisition Act, 1894, halting construction until 2016, when the NOIDA Authorities settled with landowners by paying 64.7% enhanced compensation. Further disruptions, including demonetization and COVID-19-induced lockdowns, impeded progress, yet the project achieved 90-100% completion by March 2020, with all 330 units sold.

6. The Appellant submitted that the Corporate Debtor has demonstrated substantial financial commitment to the project and its obligations. Out of the Rs. 64.5 Crores disbursed by the Financial Creditor, between 2017 and 2018 under the Term Loan Agreement dated 23.11.2016, the Corporate Debtor repaid Rs. 33 Crores by 2020. Additionally, pursuant to a Memorandum of Understanding (MoU) dated 03.12.2018 with the Lotus 300 Buyers Association, the promoters infused Rs. 25 Crores, and an additional Rs. 20 Crores over and above the agreed

amount, to expedite construction and restore credibility amidst FIRs filed by homebuyers.

7. The Appellant contended that the Corporate Debtor's solvency is further evidenced by its receivables of approximately Rs. 26 Crores from the sale of parking lots and pending dues from homebuyers for final possession. Moreover, in 2020, Three C Residency Pvt. Ltd. offered Rs. 20 Crores to the Financial Creditor in exchange for the release of title documents, an arrangement that received the Financial Creditor's in-principle No Objection Certificate on 19.08.2020. This proposal aimed to offset the Corporate Debtor's outstanding dues, underscoring its proactive efforts to resolve financial obligations.

8. The Appellant submitted that a settlement offer dated 07.11.2022, wherein Ace Infracity Developers Pvt. Ltd. proposed to pay Rs. 35 Crores over 18 months to settle dues of the Corporate Debtor and Cloud 9 Projects, was under active consideration by the Financial Creditor. The Financial Creditor's willingness to engage in these discussions demonstrates a viable alternative to insolvency proceedings.

9. The Appellant contended that the Adjudicating Authority erred in admitting the Financial Creditor's Section 7 application on 11.11.2022, initiating Corporate Insolvency Resolution Process ("**CIRP**") against the Corporate Debtor, without adequately considering its financial health and viability. It is the case of the Appellant that the Hon'ble Supreme Court in *Vidarbha Industries*

Power Ltd. v. Axis Bank Ltd., [(2022) SCC OnLine SC 841] has unequivocally held that CIRP is not warranted for solvent entities facing temporary defaults, and the Code must not be used to penalize financially sound companies. The Appellant submitted that the Adjudicating Authority's failure to apply this precedent, despite the Corporate Debtor's substantial repayments, receivables, and settlement efforts, constitutes a miscarriage of justice.

10. The Appellant further submitted that the initiation of CIRP causes irreparable prejudice to the Corporate Debtor, its stakeholders, and homebuyers, given the project's near-completion and the company's ability to realize significant receivables. The Impugned Order overlooks the Corporate Debtor's reply to the Section 7 application, which highlighted its temporary hardship and ongoing efforts to fulfil obligations, as well as the Financial Creditor's rejoinder, which failed to refute the Corporate Debtor's solvency or the impact of external delays.

11. Concluding his arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned Order and allow its appeal.

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

13. The Respondent No. 1, Indusind Bank Ltd., submitted that the present appeal filed by the Appellant against the Impugned Order dated 11.11.2022, lacks merit and is based on incorrect and unsubstantiated averments. The Adjudicating

Authority rightly admitted the Section 7 application under the Code, initiating CIRP against the Corporate Debtor, Hacienda Projects Pvt. Ltd.

14. The Respondent No. 1 contended that the Corporate Debtor's account has been a Non-Performing Asset since 29.12.2020, with no significant repayments made to clear overdue amounts exceeding two years. The prolonged default negates the Appellant's claim of temporary hardship. The Lotus 300 Project, commenced in 2011, remains incomplete without a completion certificate, causing distress to homebuyers and undermining the Corporate Debtor's financial viability.

15. The Respondent No. 1 submitted that the Impugned Order is well-reasoned, having considered the Appellant's submissions, including alleged solvency. The Respondent No. 1 stated that the Adjudicating Authority correctly observed that project completion is not the sole indicator of financial health, and the Corporate Debtor's failure to repay Rs. 33,00,42,833.09, despite selling 301 of 330 units, justifies CIRP initiation.

16. The Respondent No. 1 contended that the Appellant's reliance on *Vidarbha Industries Power Ltd. (Supra)* is misplaced, as the Corporate Debtor's default is undisputed, and no exceptional circumstances warrant withholding CIRP. The Adjudicating Authority applied its mind to relevant factors, and the Appellant raises no new grounds beyond those rejected by the Adjudicating Authority.

17. The Respondent No. 1 submitted that there is no existence of any settlement offer or settlement talks with the Corporate Debtor. The alleged Rs. 35 Crores proposal by Ace Infracity Developers Pvt. Ltd. and references to Cloud 9 Projects are irrelevant to this case. The Rs. 20 Crores Security/Comfort Letter from Three C Residency Pvt. Ltd. was speculative, lacked materialization, and was rightly disregarded by the Adjudicating Authority.

18. The Respondent No. 1 submitted that initiating CIRP aligns with the Code's objective to resolve, not liquidate, the Corporate Debtor. The Appellant's alleged claim of Rs. 26 Crores in receivables for selling parking slots does not excuse default, and CIRP is the appropriate mechanism to address creditors' interests, not a recovery action before the Debt Recovery Tribunal.

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

20. The Respondent No. 3, Lotus 300 Apartment Owners Association, submitted that the captioned appeal and the Impugned Order dated 11.11.2022, admitting the Section 7 petition against Hacienda Projects Pvt. Ltd., suffer from misrepresentation and suppression of facts, prejudicing the rights of homebuyers who have invested over Rs. 636 Crores in the Lotus 300 Project.

21. The Respondent No. 3 contended that the Corporate Debtor's promoters siphoned off Rs. 190 Crores and sold 27,941.95 sq. mtrs. of land (worth Rs. 236 Crores) in 2012 without homebuyers' consent, reducing the project plot from

67,941.95 sq. mtrs. to 40,000 sq. mtrs. in violation of the UP Apartments Act, 2010. The Respondent No. 3 submitted that this fraudulent sale, executed with Noida Authority's collusion, deprived homebuyers of 41.126% of their land value.

22. The Respondent No. 3 submitted that the project, fully funded by homebuyers, required no external loan. The Rs. 64.5 Crores loan from IndusInd Bank in 2017 appears collusive, as the project was reduced to 40,000 sq. mtrs., and receivables were mortgaged based on the original plot size. The Bank's failure to account for the sold land or pursue promoters' personal guarantees suggests an intent to siphon funds.

23. The Respondent No. 3 contended that homebuyers, through the Association, have invested an additional Rs. 15 Crores since 2019 to complete the project, with Rs. 10-15 Crores more planned, despite the promoters' abandonment. The project, with 295 of 330 apartments fully paid and two towers having occupancy certificates, is at an advanced stage, rendering CIRP unnecessary and detrimental.

24. The Respondent No. 3 submitted that the Impugned Order was passed mechanically, ignoring the project's near-completion and homebuyers' substantial stake (over 98% of claims). The Adjudicating Authority failed to issue notice to homebuyers or consider their efforts, violating natural justice and the discretionary principles under Section 7(5) of the Code.

25. The Respondent No. 3 submitted that CIRP, driven by a collusive loan of Rs. 33 Crores, threatens homebuyers' rights and delays project completion. The Resolution Professional lacks the capability to raise funds or complete the project, risking further prejudice to homebuyers who have endured a decade-long wait.

26. The Respondent No. 3 prayed for: (i) permission to complete the Lotus 300 Project while keeping CIRP in abeyance; (ii) restraining the Resolution Professional from interfering; (iii) directing the Corporate Debtor to pay Rs. 236 Crores or return the sold land; (iv) recovering Rs. 190 Crores siphoned by promoters; (v) extinguishing Noida Authority dues and ensuring sale deed execution without burdening homebuyers; and (vi) protecting homebuyers' pending dues for project completion.

27. Concluding arguments, the Respondent No. 3 requested this Appellate Tribunal to dismiss the appeal of the Appellant but to protect interest of the Homebuyers.

Findings

28. We note that it is the case of the Appellant, who is Suspended Director of the Corporate Debtor that the Impugned Order is incorrect as the Corporate Debtor is a viable company and should not have been initiated into CIRP. The Appellant has also argued that the case is squarely covered under the judgement of *Vidarbha Industries Power Ltd. (Supra)*.

29. The issue therefore, to be decided in the appeal moves in the limited canvas whether the Corporate Debtor is a viable company which entitles the Corporate Debtor to be covered under the ratio of *Vidarbha Industries Power Ltd. (Supra)*.

30. According to the Appellant, Ace Infracity Developers Pvt. Ltd. has proposed to pay Rs. 35 Crores over 18 months to settle the dues of Corporate Debtor and another projects. The Appellant also argued that he is still willing to negotiate with the Financial Creditors and complete the project.

31. While facts and the ratio of *Vidarbha Industries Power Ltd. (Supra)* are well known. It is suffice to note that in *Vidarbha Industries Power Ltd.* there was more money likely to be made available to the therein Appellant which was pending final adjudication before the Hon'ble Supreme Court of India after *Vidarbha Industries Power Ltd.* won its case at other legal fora and such money was much more than the dues payable by the *Vidarbha Industries Power Ltd. (Supra)* as such the Hon'ble Supreme Court of India gave the judgment stipulating the viability of the Corporate Debtor in the matter of *Vidarbha Industries Power Ltd. (Supra)*. In contrast to this, in the present appeal there is no material available that the Appellant was in position to repay the financial obligations to the financial creditors. In fact, we note that in IndusInd Bank Limited, the Respondent No. 1 herein, has strongly refuted that the Appellant tried to settle the dues and indicated that the Appellant is just not in position to settle the outstanding dues of the Financial Creditors.

32. We also note from the pleadings of the Respondent No. 3 i.e., Lotus 300 Apartment Owners' Association, who also opposed the contentions of the Appellant and submitted that the Corporate Debtor's, Promoters siphoned off Rs. 190 Crores and also sold 27,941.95 sq.mt. land worth Rs. 236 Crores in 2012 without homebuyers consent, reducing the plot size from 67,941.95 sq. mt. to 40,000 sq. mt. The Respondent No. 3 also submitted they have been pumping in their funds to complete the projects. The Respondent No. 3 wants the protection from the Impugned Order in limited way to protect their own interest, however, the Respondent No. 3 opposed the contentions of the Appellant that he was not liable for the failure of the project and he is willing to complete the projects.

33. We also find no substantial record has been brought out indicating that the project could have been completed by the Appellant or he has the financial and other resources to complete the project.

34. We take note of the pleadings of Respondent No. 3 regarding siphoning off money by the Ex-Promoters of the Corporate Debtor but do not intend to go into the aspect as this is not a subject matter of the present appeal which is a limited to a allowing Section 7 application and initiation of CIRP against the Corporate Debtor.

35. The alleged third party settlement by the Ace Infracity Developers Pvt. Ltd. also does not seem to be a viable option as the same has been rejected by the Respondent No. 1/ Financial Creditor.

36. At this stage, we also look into the reasoning as contained in the Impugned Order while initiating Section 7 application and the relevant portion 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)

37. Thus, we note that the Adjudicating Authority has taken into consideration all the facts and law into consideration and came to the conclusion that the Appellant has failed to make out any case for not initiating CIRP.

38. We are not convinced with the arguments of the Appellant that the Appellant is in a position to complete the project or his covered by **Vidarbha Industries Power Ltd. (Supra)**.

39. Incidentally, we note that this Appellate Tribunal gave the stay on 28.11.2022 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)

40. However, we note that despite lapse of almost three years, the project has not been completed. Thus, the benefit of stay was not translated by the Appellant

to complete the project and satisfy dues of Financial Creditor. The appeal therefore does not stand on merits.

41. In this case, the Respondent No. 3 has filed an IA No. 4443 of 2023 for impleadment where it was indicated that 99% project is complete and the homebuyers themselves was investing their money for completing the project. This Appellate Tribunal also directed that the CoC not to be constituted in pursuant to Adjudicating Authority's order dated 11.11.2022 and finally it was stipulated that on going project may go on with due information of every step including account to be given to the Resolution Professional.

42. On a pointed query by this Appellate Tribunal to the Appellant regarding steps he has taken subsequently, no detailed answer could be furnished.

43. After going through all the facts of the case, especially the financial status of the Appellant as Promoters of the Corporate debtor and the reason the Appellant sought invoking protection of *Vidarbha Industries Power Ltd. (Supra)* case, we are not convinced with the same.

44. We do not find adequate resources available with the Appellant, which could have been utilised by the Appellant as Promoters of the Corporate Debtor to settle the Financial Creditors including the Respondent No. 1 & 3.

45. It is also worthwhile to note that the project was to be completed in the year 2014 and even in the current year of 2025, the towers are yet to be completed along with other facilities and dues of NOIDA Authority are still to be paid. The

contesting Respondent i.e., IndusInd Bank Limited/ Respondent No. 1 herein as well as Intervenor Homebuyers who constitute the CoC have also refuted the claims of the Appellant.

46. Based on above detailed observations, 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. Indevar Pandey]
Member (Technical)**

Sim