

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) Nos.1100 & 1101 of 2024

[Arising out of Order dated 06.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court – II) in IA-355/2021 and CA-26/2023 in (IB)-917(ND)2019]

IN THE MATTER OF:

Atul Paper Pvt. Ltd.

...Appellant

Versus

Rakesh Kumar Jain, Liquidator for
RG Infra Build Pvt. Ltd.

...Respondent

Present:

**For Appellant: Mr. Kumar Anurag Singh, Mr. Zain A. Khan, Mr.
Vijay Mathur, Advocates.**

For Respondent: Mr. Mohit Nandwani, Advocate

With Comp. App. (AT) (Ins) No. 1311 of 2024

[Arising out of Order dated 06.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court – II) in IA-355/2021 in (IB)-917(ND)2019]

IN THE MATTER OF:

Rakesh Kumar Jain

...Appellant

Versus

Atul Paper Pvt. Ltd.

...Respondent

Present:

For Appellant: Mr. Mohit Nandwani, Advocate

**For Respondent: Mr. Kumar Anurag Singh, Mr. Zain A. Khan, Mr.
Vijay Mathur, Advocates.**

With
Comp. App. (AT) (Ins) No. 2137 of 2024
& I.A No. 7672 of 2024

[Arising out of Order dated 06.05.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court – II) in IA-355/2021 in (IB)-917(ND)2019]

IN THE MATTER OF:

Punjab National Bank

...Appellant

Versus

Rakesh Kumar Jain & Ors

...Respondents

Present:

For Appellant: **Mr. Ankit Raj, Mr. Piyush Beriwal, Mr. Digvijay Singh, Mr. Ali Mohammed Khan, Advocates.**

For Respondents: **Mr. Kumar Anurag Singh, Mr. Zain A. Khan, Mr. Vijay Mathur, Advocates.**

Mr. Mohit Nandwani, Advocate

J U D G M E N T

Ashok Bhushan, J.

These three Appeal(s) have been filed challenging the same order dated 06.05.2024 passed by National Company Law Tribunal, New Delhi Bench (Court – II) in IA No.355 of 2021 and CA No.26/2023 in CP (IB)-917(ND) 2019. Company Appeal (AT) (Ins.) Nos.1100 & 1101 of 2024 have been filed by M/s Atul Paper Pvt. Ltd., who is in possession of B-101, First Floor at RG City Centre and has filed claim before the Liquidator of the Corporate Debtor (“CD”) – M/s RG Infra Build Pvt. Ltd. Company Appeal (AT) (Ins.) Nos.1311 of 2024 has been filed by the Liquidator of the CD, challenging the part of direction issued by Adjudicating Authority in IA No.355 of 2021, whereas Company Appeal (AT) (Ins.) Nos.2137 of 2024 has

been filed by Punjab National Bank, a Financial Creditor of the CD, challenging part of the order passed in IA No.355 of 2021.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

- (i) The Appellant entered into an Agreement to Sell dated 24.04.2018 with the CD – RG Infra Build Pvt. Ltd. for sale of commercial unit B-101, First Floor at RG City Centre, admeasuring built up area of 301.75 meters, for a total sale consideration of Rs.2.70 crores. Atul Paper Pvt. Ltd. paid an amount of Rs.2.01 crores towards sale consideration and possession of the unit was also handed over to the Atul Paper Pvt. Ltd. on 25.04.2018. However, no Sale Deed could be executed in favour of Atul Paper Pvt. Ltd.
- (ii) The Corporate Insolvency Resolution Process (“**CIRP**”) against the CD commenced on 25.09.2019 on an Application filed by M/s Ved Contracts Pvt. Ltd. The Respondent – Rakesh Kumar Jain was appointed as the Resolution Professional (“**RP**”).
- (iii) Atul Paper Pvt. Ltd. along with its two Directors filed a claim of Rs.2.51 crores before the RP. The claim of the Appellant was rejected by the RP on 27.08.2021.
- (iv) The RP after coming to know that Atul Paper Pvt. Ltd. is in possession of the commercial unit owned by the CD, filed an IA No.355 of 2021 seeking a direction to Atul Paper Pvt. Ltd. to vacate the premises.

- (v) On 16.03.2023, an order was passed by the Adjudicating Authority, directing initiation of liquidation proceedings against the CD.
- (vi) On 27.04.2023, Atul Paper Pvt. Ltd. filed a claim of Rs.2.51 crores before the Liquidator, which claim was rejected by the Liquidator on 30.04.2023 on account of claim having been filed with delay. Atul Paper Pvt. Ltd. filed an Appeal under Section 42 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) being CA No.26 of 2023.
- (vii) The Adjudicating Authority permitted the Liquidator to pursue the IA, which was filed by the RP being IA No.355 of 2021. The Adjudicating Authority heard the Liquidator and Atul Paper Pvt. Ltd. along with two Directors, i.e. Atul Kumar Garg and Sachin Kumar Garg and by the impugned order, disposed of IA No.355 of 2021, directing the Atul Paper Pvt. Ltd. to vacate the commercial unit. The Adjudicating Authority also while issuing the said direction, directed the Liquidator to pay an amount of Rs.2.01 crores to the Atul Paper Pvt. Ltd., in event of sale of the above unit by the Liquidator. CA No.26 of 2023, which was an Appeal filed by Atul Paper Pvt. Ltd. challenging the rejection of its claim, was disposed of as having become infructuous.
- (viii) Aggrieved by the order passed in IA No.355 of 2021 and CA No.26 of 2023, Company Appeal (AT) (Ins.) Nos.1100 & 1101 of 2024 have been filed by Atul Paper Pvt. Ltd.; Company Appeal

(AT) (Ins.) Nos.1311 of 2024 has been filed by the Liquidator, challenging the impugned order insofar as it directed the Liquidator to pay an amount of Rs.2.01 crores. Punjab National Bank – Financial Creditor of the CD also aggrieved by part of the order by which Adjudicating Authority directed payment of Rs.2.01 crores to the Atul Paper Pvt. Ltd., has filed Company Appeal (AT) (Ins.) Nos.2137 of 2024.

3. There was delay in filing of the Company Appeal (AT) (Ins.) Nos.2137 of 2024 as well as delay in refiling of the Appeal. Application being IA No.7961 of 2024 praying for condonation of delay in filing of the Appeal was allowed vide order dated 20.02.2025. In IA No.7672 of 2024 praying for condonation of refiling delay, reply was directed to be filed by order dated 20.02.2025, but no reply has been filed. IA No.7672 of 2024 praying for condonation of refiling delay, is allowed.

4. We heard learned Counsel appearing for Atul Paper Pvt. Ltd.; learned Counsel appearing for the Liquidator as well as learned Counsel appearing for the Punjab National Bank.

5. Learned Counsel appearing for the Appellant in Company Appeal (AT) (Ins.) Nos.1100 & 1101 of 2024 in support of the Appeal(s) submits that the Appellant has paid an amount of Rs.2.01 crores out of total sale consideration of Rs.2.70 crores for the unit B-101 and was handed over the possession on 25.04.2018. The Appellant being in possession of the unit, by virtue of Section 53A of the Transfer of Property Act, 1882 (“**Property Act**”) the Liquidator is prohibited from enforcing any rights in the said unit. It is

submitted that the Appellant was always ready to pay the balance consideration of Rs.69 lakhs and in pursuance of the order passed by this Tribunal on 30.05.2024, an amount of Rs.69 lakhs has already been deposited with the Liquidator. It is submitted that order passed by Adjudicating Authority directing the Appellant to vacate the premises is unsustainable. The observation of the Adjudicating Authority that transaction of the Appellant with the CD on 24.04.2018 is not bonafide is without any basis. The CD has purchased the unit from its sister concern and sale consideration was paid by the CD in the year 2015. The sale consideration paid by the Appellant as per Agreement dated 24.04.2018 was due to market condition as on that date. The observation of the Adjudicating Authority that the Appellant did not take steps for specific performance of the Agreement also cannot be sustained, since the Agreement was entered only on 24.04.2018 and CIRP commenced on 25.09.2019, i.e. well before the expiry of the limitation for filing a suit for specific performance.

6. Learned Counsel for the Liquidator refuting the submissions of the Appellant submits that the Appellant is not entitled for benefit of Section 53A of the Property Act. Learned Counsel for the Liquidator has referred to Section 17(1-A) of the Registration Act, 1908 and submitted that the Agreement dated 24.04.2018 was an unregistered Agreement to Sell, which does not confer any right on the Atul Paper Pvt. Ltd. It is submitted that as per clauses of the Agreement dated 24.04.2018, the sale consideration was to be paid on or before 30.06.2018 and further the CD was to arrange to

obtain the NOC from the Bank within 30 days of receipt of the final payment. The Agreement also contemplated that no right will accrue with Atul Paper Pvt. Ltd. until the Sale Deed is executed. The balance amount of sale consideration was never paid by the Appellant. The CD is the owner of the asset and the RP/ Liquidator is entitled to take possession of the asset of the CD, which is part of the liquidation estate. It is submitted that the Adjudicating Authority committed error in issuing direction to refund the amount of Rs.2.01 crores to Atul Paper Pvt. Ltd. The Atul Paper Pvt. Ltd. has no right, title or interest in the property. The Appellant has filed claim for refund of part sale consideration with interest, which claim was rejected both by the RP and the Liquidator. The claim, if any, of the Appellant, shall be settled in accordance with the provisions of the IBC. Atul Paper Pvt. Ltd. neither can hold the possession nor can claim refund of Rs.2.01 crores. The Adjudicating Authority could not have directed for refund of Rs.2.01 crores.

7. Learned Counsel appearing for the Punjab National Bank submits that the CD had purchased the unit by Sale Deed dated 04.12.2015. The CD have mortgaged the unit B-101 by Mortgage Deed dated 11.12.2015 in favour of the Punjab National Bank. Unregistered Agreement dated 24.04.2018 was entered by Atul Paper Pvt. Ltd. with the CD, without obtaining a 'No Objection' from the Financial Creditor. Without No Objection of the Financial Creditor, the property cannot be dealt with. Before the RP and the Liquidator, Atul Paper Pvt. Ltd. two Directors filed a claim of Rs.2,51,85,025/-, with interest. The Adjudicating Authority erred in issuing direction to refund the amount of Rs.2.01 crores to Atul Paper

Pvt. Ltd., whereas no such prayer was made in IA No.355 of 2021. The Atul Paper Pvt. Ltd. at best is entitled for settlement of its claim in accordance with Section 53 of the IBC.

8. We have considered the submissions of learned Counsel for the parties and have perused the record.

9. It has been brought on the record that the CD purchased the unit B-101 on First Floor at RG City Centre on 04.12.2015 for an amount of Rs.6.5 crores. The CD has mortgaged the unit with Punjab National Bank and obtained Financial Facilities from it. Mortgage Loan Overdraft of Rs.4.5 crores was obtained by the CD and the asset B-101 RG City Centre was mortgaged. Copy of the Mortgage Deed has been brought on the record in the Appeal filed by Punjab National Bank, where value of the asset was mentioned as Rs.5.72 crores. An unregistered Agreement was entered by the CD with Atul Paper Pvt. Ltd., which has been brought on the record by Atul Paper Pvt. Ltd. in the Appeal. The said Agreement to Sell was entered for consideration of Rs.2.70 crores. It is useful to extract Clauses 7 and 9 of the Agreement to Sell, which are as follows:

- “7. TIME is the Essence with respect to the VENDEE's obligations to pay the payments such as applicable Interest free maintenance security, taxes and other charges, deposits stipulated under this Agreement to Sell to be paid on or before due date or as and when demanded by the VENDOR as the case may be and also to perform or observe all the other obligations of the VENDEE under this Agreement to Sell.
9. That the total sale consideration amount for the said commercial unit is Rs.2,70,00,000/- (Rupees Two Crore and

Seventy lakh only) including Rs. 1,00,000/-/- (Rupees One Lakh only) as booking amount.

The VENDEE shall make the payment for the said commercial unit as per detail below:

Sl no.	Details of payment	Amount (in Rs.)
1	Amount paid vide cheque no. 625901 drawn on HSBC Bank, Barakhamba Road, New Delhi as advance amount at the time of booking on	1,00,000.00
2	Balance amount shall be paid on or before 30-06-2018	2,69,00,000.00
	Total amount	2,70,00,000.00

(Rupees Two crore and seventy lakh only)”

10. Further, Clause 14.1 clearly mentions that no right will accrue in favour of the Vendee until the Sale Deed is registered. Clause 14.1 is as follows:

“14.1 The VENDEE agrees that no right will accrued in favour of the VENDEE in the Commercial Unit until a Sale Deed is executed & registered, and the VENDOR was the owner of the Commercial unit and also the construction thereon. The VENDOR shall have the first lien and charge on the commercial unit for all its dues that may become due and payable by the VENDEE(s) to the VENDOR.”

11. Learned Counsel for Atul Paper Pvt. Ltd. has relied on provisions of Section 53A of the Transfer of Property Act and submits that part performance having been made by the Vendee - Atul Paper Pvt. Ltd., the RP and the Liquidator are prohibited from enforcing any right in the asset. Section 53A of the Transfer of Property Act, 1882 is as follows:

“Section 53A: Part Performance.

53A. Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from

which the terms necessary to constitute the transfer can be ascertained with reasonable certainty, and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract, then, notwithstanding that, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed there for by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.”

12. Learned Counsel appearing for the Liquidator on the contrary relied on Section 17(1-A) of the Registration Act, 1908, which provision is as follows:

“17(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purposes of section 53-A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said section 53-A.”

13. The Agreement to Sell, admittedly being an unregistered document, Atul Paper Pvt. Ltd., cannot claim any right under Section 53A of the Property Act, which is clearly stipulated by provisions of Section 17 (1) of the Registration Act, 1908 as noted above. We, thus, do not find any substance

in the submission of the Appellant - Atul Paper Pvt. Ltd. that it was entitled for benefit of Section 53A of the Transfer of Property Act.

14. The submission which has been next pressed by learned Counsel for the Appellant - Atul Paper Pvt. Ltd. that it has paid an amount of Rs.2.01 crores and has further paid an amount of Rs.69 lakhs under the interim order passed by this Tribunal, hence, the entire amount having been paid, the Liquidator may be directed to execute the Sale Deed. It is the case of the Appellant that it was handed over possession on 25.04.2018 and it was continuing the possession, till CIRP commenced on 25.09.2019. On the date of commencement of CIRP, ownership of the unit B-101 was still with the CD and the Appellant had no right in the unit. Learned Counsel for the Liquidator has rightly relied on Section 54 of the Property Act, which provides that 'a contract for sale does not create any interest or charge in the property'.

15. Atul Paper Pvt. Ltd. also filed a claim in the CIRP, copy of which Claim Form filed by Atul Paper Pvt. Ltd. before the RP has been brought on the record, which is dated 17.08.2020. In the claim, which was filed for Rs.2,51,85,025/-, which included the interest upto 19.09.2019, the Claim Form further mentioned that *"the above claim is without prejudice to my right for possession of my Unit No.B-101, on First Floor at RG City Centre situated at Plot No.SU, LSC at B-Block, Lawrence Road, Delhi, as per the Agreement to Sell dated 24.04.2018, entered between the CD and Atul Paper Pvt. Ltd., as per the Agreement to Sell dated 24.04.2018 entered between the CD and the Atul Paper Private Limited my rights and remedies under the law of India"*. It

is further relevant to notice that the CD has purchased the asset in the year 2015 for an amount of Rs.6.7 crores and the CD has entered into a contract of sale with Atul Paper Pvt. Ltd. for an amount of Rs.2.7 crores.

16. Atul Paper Pvt. Ltd. having no right in the asset, directions issued by Adjudicating Authority to Atul Paper Pvt. Ltd. to vacate the premises, cannot be faulted. All assets of the CD are part of the liquidation estate, which liquidation estate are to be utilized for distribution to the stakeholders. The Appellant has also filed a claim both before the RP and the Liquidator for an amount of Rs.2.51 crores, as noted above, which claim was rejected by the Liquidator on the ground of delay in filing the claim. An Appeal was also filed by Atul Paper Pvt. Ltd. challenging the order of the Liquidator rejecting the claim under Section 42 of the IBC, being CA No.26 of 2023. The Adjudicating Authority after issuing direction to Atul Paper Pvt. Ltd. to vacate the premises, it further directed the Liquidator to pay an amount of Rs.2.01 crores and CA No.26 of 2023 filed by Atul Paper Pvt. Ltd. challenging the order of the Liquidator was dismissed as infructuous.

17. We are of the view that claim submitted by Atul Paper Pvt. Ltd. was required to be admitted by the Liquidator. Atul Paper Pvt. Ltd. had also filed the claim before the RP, which was not admitted. The Liquidator, however, rejected the claim only on the ground of delay in filing of the claim. We, thus, are of the view that CA No.26 of 2023 deserved to be allowed by setting aside the order of Adjudicating Authority, disposing the same as having become infructuous. We partly allow the appeal and direct the Liquidator to

admit the claim of the Atul Paper Pvt. Ltd. in appropriate category, which claim shall be dealt with in distribution in accordance with law.

18. Now coming to the direction of the Adjudicating Authority to pay an amount of Rs.2.01 crores to Atul Paper Pvt. Ltd., we are of the view that when stakeholder filed a claim in the CIRP and in the liquidation, the claim is entitled to be dealt with as per Section 53 of the IBC. The Adjudicating Authority could not have issued any direction to make any payment to any stakeholder, de hors, the distribution as contemplated by the IBC. We, thus, are of the view that direction of the Adjudicating Authority for payment of Rs.2.01 crores to Atul Paper Pvt. Ltd., cannot be sustained.

19. As noted above, Atul Paper Pvt. Ltd. in view of the interim order passed in Company Appeal (AT) (Ins.) Nos.1100 & 1101 of 2024 on 30.05.2024 had deposited the amount of Rs.69 lakhs before the Liquidator. We are of the view that the said amount be refunded by the Liquidator to Atul Paper Pvt. Ltd. along with interest it has earned, if any, in event the said amount is kept in the interest-bearing account, within a period of 30 days.

20. In view of the foregoing discussions and conclusions, all the Appeal(s) are decided in following manner:

- (I) Company Appeal (AT) (Ins.) No.1100 of 2024 filed by Atul Paper Pvt. Ltd. challenging the order passed in IA No.355 of 2021 directing Atul Paper Pvt. Ltd. to vacate the premises, is dismissed.

- (II) Company Appeal (AT) (Ins.) No.1101 of 2024 filed by Atul Paper Pvt. Ltd. challenging the order passed in CA No.26 of 2023 is allowed, the order of Adjudicating Authority dismissing CA No.26 of 2023 as infructuous, is set aside. The Liquidator is directed to admit the claim submitted by the Appellant for Rs. 2,51,85,025/- in appropriate category and distribution of the amount shall be done in accordance with Section 53 of the IBC.
- (III) Company Appeal (AT) (Ins.) Nos.1311 and 2137 of 2024 filed by Rakesh Kumar Jain and Punjab National Bank, respectively, are allowed and the part of the order dated 06.05.2024 passed in IA No.355 of 2021 directing the Liquidator to make payment of Rs.2.01 crores to Atul Paper Pvt. Ltd. is set aside. Both the Appeal(s) are partly allowed.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

New Delhi

17th July, 2025

Ashwani