

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 97 of 2025

IN THE MATTER OF:

Pioneer Urban Land & Infrastructure Ltd.

...Appellant

Versus

Presidia Araya Residents Welfare Association

...Respondent

Present:

For Appellant : Mr. Nikhil Nayyar, Sr. Advocate with Mr. Rajat Khanna, Mr. Divyanshu Rai, Ms. Taruna and Mr. Kshitij Maheshwari, Advocates.

For Respondent : Mr. Vivek Kumar, Mr. Akshay Srivastava and Mr. Jayant Upadhyay, Advocates.

O R D E R
(Hybrid Mode)

20.01.2025: This Appeal has been filed by the Corporate Debtor, challenging the Order dated 13.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench, Court – I, Chandigarh) in C.P. (IB) No.327/Chd/Pb/2022.

2. The Application was filed by the Respondent under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short 'The Code' or 'The IBC') praying for initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Adjudicating Authority directed the parties to address the submissions on maintainability of the Application, since one of the objections which was raised by the Corporate Debtor was regarding maintainability of the Application. Both the parties also filed their Written Submissions in Section 7 Application. Adjudicating Authority by the

Impugned Order has held the Application maintainable and directed the matter to be listed on 23.01.2025 for further consideration.

3. In the operative portion of the Impugned Order in Paragraphs 10 to 12, following has been directed:

“10. As a sequel to the above discussion and reasons recorded hereinbefore we find that the present petition is maintainable, and the Petitioner has been able to establish the debt beyond the threshold limit of Rs. 1 crore.

11. In view of the above, we have the considered view that the petition is maintainable under Section 7 of the Code.

12. Let the matter be listed on 23.01.2025 for further consideration.”

4. Learned Counsel for the Appellant submits that when the Adjudicating Authority was considering the question of maintainability on the Application, other issues were not required to be considered including the nature of debt involved in Section 7 Application. It is submitted that the Adjudicating Authority in the Impugned Order has decided all issues which may pertain to the merits of the Application and the findings returned by the Adjudicating Authority in the Impugned Order shall overlap when the question of merits of the Application shall come into consideration and Appellant shall be precluded to raise any other issues.

5. Learned Counsel for the Respondent submits that since the Corporate Debtor raised the question of maintainability, Adjudicating Authority gave ample opportunity to both the parties to address and the Adjudicating Authority has proceeded to decide the Application on basis of pleadings and arguments raised by the parties before the Adjudicating Authority, hence, no

error can be said to have been committed by the Adjudicating Authority in passing the Impugned Order.

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

7. Although, it is not necessary for the Adjudicating Authority while deciding an Application under Section 7 to separately consider any objection regarding maintainability and Adjudicating Authority can proceed to examine the said question while finally deciding the Section 7 Application or may proceed to decide it separately as has been done in the present case.

8. Adjudicating Authority having returned the finding that Application is maintainable, we do not find any ground to interfere with the said finding regarding maintainability.

9. Application filed by the 148 units out of total 228 units was held to be maintainable.

10. Only issue which has been raised by the Appellant is regarding the nature of the debt which was involved. It is submitted that one of the Judgments which has been relied by the Adjudicating Authority in '*M/s. Vipul Greens Residents Welfare Association*' Vs. '*Vipul Limited*' in I.B. No. 541(ND) of 2019, the said Judgment was subsequently set aside by the Hon'ble Supreme Court, although, on basis of the settlement, but the Judgment could not have been relied for any proposition.

11. Learned Counsel for the Appellant has also brought on the record the Order of the Hon'ble Supreme Court in the matter of '**Punit Beriwalla**' Vs.

‘Vipul Greens Residents Welfare Association & Anr.’ in Civil Appeal No. 4467/2021, which is annexed as Annexure A-30, Page 680, which Order reads as follows:

“Mr. K. V. Vishwanathan, learned senior counsel appearing for the applicant in I.A.No. 89123 of 2021, has informed us, on instructions, that the CoC has not yet been constituted, as a result of which his client is within the 30-day period in which this application may be taken up, and an order passed by us stating that the matter has been settled. Accordingly, we do so and take the Settlement Agreement dated 26.07.2021 on record and dispose of the appeal. The NCLT Order is set aside.”

12. The last line of Order indicates that NCLT Order is set aside. From the aforesaid, it appears that Hon’ble Supreme Court did not enter into the merits of the issues raised and decided by the NCLT but Order having been set aside, the said Order could not have been relied by the Adjudicating Authority.

13. Learned Counsel for the Appellant lastly sought to raise the submission that Applicants who have filed the Application could not be Member of the Association. The Application was filed by Association. The issue as to who could be the Member of Association was not required to be gone into by the Adjudicating Authority and as held by the Adjudicating Authority, Application filed by the Association was maintainable.

14. In the facts of the present case, we are of the view that ends of justice be served in disposing of this Appeal with observation that Adjudicating Authority shall proceed to decide the Section 7 Application on merits. The question of maintainability stands closed in favour of the Applicant. We, however, observe that it shall be open for the parties to address the submission on the nature of debt and default which question are questions

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on merits of the Section 7 Application which need to be addressed and answered by the Adjudicating Authority in accordance with law afresh.

With these observations, Appeal disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

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