

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 856 of 2024 & I.A. No. 2958, 3089
of 2024

IN THE MATTER OF:

IIFL Home Finance Ltd.

...Appellant

Versus

Shiv Nandan Sharma Resolution Professional
Saha Infratech Pvt. Ltd.

...Respondent

Present:

For Appellants : Mr. Aditya Madaan, Aishwarya Adlakha,
Natasha, Adv.

For Respondent : Mr. Deep Bisht, Adv.

ORDER

20.05.2024: **I.A. No. 3090 of 2024:** This application is filed for seeking exemption from filing the certified copy of the impugned order. The application is allowed subject to the condition that the Appellant shall file the certified copy of the impugned order within one month from the date of passing of this order.

I.A. No. 3091 of 2024: This application is filed for seeking exemption from filing typed copies, clear copies of dim/unclear and illegible documents as annexures. The application is allowed subject to all just exceptions.

I.A. No. 3089 of 2024: This application is filed for seeking condonation of delay of 7 days in filing the present appeal. At this stage, Deep Bisht, Adv. for R1 accepts notice in court and submits that he does not want to file any reply nor have any objection. Consequently, the application is allowed and the delay of 7 days is hereby condoned.

Comp. App. (AT) (Ins) No. 856 of 2024

This appeal arises from the order dated 23.01.2024, passed by the National Company Law Tribunal, New Delhi (in short 'Tribunal') by which application bearing 6104 of 2023 filed by the present Appellant seeking a direction to the Resolution Professional to acknowledge or admit their claim and create its chart qua the flats being developed by the Corporate Debtor, has been dismissed.

2. The brief facts of this case are that M/s Saha Infratech Pvt. Ltd. (Corporate Debtor) was developing a project 'Amadeus' in Sector 143, Noida. It invited applications for allotment by sale of residential apartments.

3. It is alleged by the Appellant that two flat buyers, namely, Mr. Vikas Pandhi (alongwith Mr. Kewal Krishan Pandi and Mrs. Anu Pandhi) & Mr. Viond Kumar (alongwith Mrs. Preeti) approached it for availing the credit/financial facilities (loan) for purchasing units/flats in the aforesaid project. The Appellant has given a table in the memo of appeal to indicate the date of sanction letter, amount of loan sanctioned and amount disbursed. The said table is reproduced as under:-

<i>Sr. No.</i>	<i>Details of the Borrower / Flat Buyers (hereinafter collectively</i>	<i>Prospect ID/ Loan Account No.</i>	<i>Date of Sanction Letter</i>	<i>Amount of Loan sanctioned (Rupees)</i>	<i>Amount Disbursed Until</i>
----------------	--	--------------------------------------	--------------------------------	---	-------------------------------

	<i>referred to as "flat buyers")</i>				
1.	Mr. Vikas Pandhi Mr. Kewal Pandhi Mrs. Anu Pandhi <i>(hereinafter referred to as "Vikas Pandhi")</i>	760248	31.07.2016	1,74,00,000/-	1,52,35,855/-
2.	Mr. Vinod Kumar Mrs. Preeti <i>(hereinafter referred to as "Vinod Kumar")</i>	769362	26.10.2016	1,11,23,068/-	1,01,87,140.25/-

4. It is alleged that loan agreements were executed between the Appellant as a lender and the flat buyers as a borrower. The loan was sanctioned to the borrower against the equitable mortgage created on their respective flats. The detail of flats / units secured in favour of the appellant by the flat buyers qua the said loan is also given in the memo of appeal which is also reproduced as under:-

<i>Sr. No.</i>	<i>Details of the Home Buyers (Borrower)</i>	<i>Loan Amount (Rupees)</i>	<i>Details of the Flats/ Units secured by the Flat Buyers in favour of the Appellant</i>
1.	Mr. Vikas Pandhi; Mr. Kewal Krishan Pandhi and Mrs. Anu Pandhi	Rs. 1,74,00,000/-	Unit No. CGF03 Ground Floor, Tower-C, Amadeus, Plot No. GH-02 at Sector 143, Noida, Gautam Buddha Nagar, 201301, Uttar Pradesh, India
2.	Mr. Vinod Kumar and Mrs. Preeti	Rs. 1,11,23,068/-	Unit No. A2204 22 nd Floor, Tower-A, Amadeus, Plot No. GH-02 at Sector 143, Noida, Gautam Buddha Nagar, 201301, Uttar Pradesh, India

True copies of the Declaration submitted by the Flat Buyers to the Appellant are annexed and marked as Annexure A-6 (Colly.).

5. It is further alleged that there was a Quadrapartite Agreement amongst Logix city Developers Pvt. ltd. (owner), Saha Infratech Pvt. Ltd. (Developer), Mr. Vikas Pandhi and Anu Pandhi

(Borrower) and India Infoline Housing Finance Limited (IIHFL) (Appellant).

6. A similar agreement was also executed amongst the same party on 14.11.2016 pertaining to other flats owned by Vinod Kumar and Mrs. Preeti Singh.

7. In the meanwhile, vide order dated 28.02.2020, the NCLT, Delhi admitted CP (IB) – 1781/ND/2018 filed by one Financial Creditor under Section 7 of the IBC, 2016 against the Corporate Debtor which commenced the CIRP proceedings. Mr. Arun Jain was appointed as IRP but later on replaced by the present Respondent, namely, Mr. Shiv Nandan Sharma by order dated 28.02.2020.

8. It is alleged by the Appellant that vide email dated 17.08.2023, it filed a claim of Rs. 2,31,50,653.3/- in Form C with the Respondent but despite its various letters and reminders, the claim was not admitted, therefore, the Appellant filed I.A. No. 6104 of 2023 before the Tribunal praying for a direction to RP to acknowledge/admit their claim and create its chart qua the flats being developed by the CD.

9. The said application has been dismissed, therefore, the present appeal has been filed.

10. Counsel for the Appellant has vehemently argued that since the homebuyers purchased the flats with the loan advanced by the Appellant and have also mortgaged the said units as a security, the Appellant is a secured creditor qua the mortgaged flats but the impugned order has extinguished the lawful rights of the secured creditor.

11. We have heard Counsel for the Appellant and after perusal of the record, are of the opinion that there is no merit in the submission because there is no error in the impugned order as it is covered by the decision of this Tribunal delivered in IA No. 1502 of 2020 and I.A. No. 1503 of 2020 in CA (AT) (Ins) No. 582 of 2020 decided on 20.12.2021. The relevant portion of the said order has been reproduced in the impugned order which we also refer for clarity which read as under:-

“10. It is clear from the principle laid down by the Hon’ble Supreme Court in ‘Pioneer Urban Land & Infrastructure Ltd. & Anr.’ (Supra) that it is the Home Buyer who should be considered as ‘Financial Creditors’ of the ‘Corporate Debtor’ whether he has self-financed his flat or has exercised his choice of taking a loan from the Bank.

16. From the aforementioned clause in the tri-partite Agreement entered into between the Home Buyer, the Axis Bank and the ‘Corporate Debtor’, it is evident that in case of any default by the Borrower, the Bank would have the right to write to the builder for cancellation of Agreement executed between the developer and the Borrower, whereafter the Bank shall have the right to pay the sale consideration and get the subject property registered. There is no material on record to evidence that any such cancellation has taken place. The Home Loan Agreement read with the Demand Letters and the Allotment Letter clearly specify that when there is a ‘default’ on behalf of the Home Allottee a penalty interest would have to be paid by the allottee to the Bank. Therefore, the ‘default’ aspect is to be seen vis-a-vis the Home Allottee and the Appellant Bank only. It is contended by the Respondent that though the Allotment Letter shows that the payments were construction linked, the Bank released the entire amount prior to completion of construction.

17. Be that as it may, we are of the considered view that this subject matter cannot be viewed from such a narrow compass. It is definitely not the scope and objective of the Code to include Banks/Financial Institutions which have advanced loans to Home Buyers to be considered as 'Financial Creditors' and included in the CoC, specifically in the light of the fact the liability to repay the Home Loan is on the individual Home Buyers. This would defeat the very spirit and objective of the Code aiming at Resolution and maximisation of the assets of the 'Corporate Debtor'. Presence of a mere tri-partite Agreement does not change the character of the amount borrowed by the Home Buyer vis-a-vis the Bank and vis-a-vis the 'Corporate Debtor'. Viewed from any angle, the Appellant cannot be included as a 'Secured Financial Creditor' in this case and hence we find no reasons to interfere with the well-reasoned Order of the Adjudicating Authority."

12. Thus, in view of the aforesaid facts and circumstances, we do not find any merit in the present appeal which is denuded of any merit and the same is hereby dismissed. No costs.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

Sheetal/Ravi