

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

**Company Appeal (AT) (Insolvency) No. 2076 of 2024
& I.A. No. 7357 of 2024**

[Arising out of Order dated 10.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in IA No.2413 of 2024]

IN THE MATTER OF:

Gaurav Jindal

...Appellant

Versus

**Debashish Nanda,
RP Bulland Buildtech Pvt. Ltd.**

...Respondents

Present:

For Appellant: Mr. Rakesh K. Bajaj, Ms. Arohi Bhalla, Advocates.

**For Respondents: Mr. Sumant Batra, Mr. Sarthak Bhandari,
Advocates for RP.
Ms. Anuja Pethia, Mr. Rishabh Govila, Advocates
for SRA.**

**J U D G M E N T
(19th March, 2025)**

Ashok Bhushan, J.

This Appeal has been filed challenging the order dated 10.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench (Court- II) by which application IA No.2413 of 2024 filed by the Appellant has been rejected.

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

2.1. Appellant was allotted Flat No.C-103 on payment of Rs.29 lakhs on 04.06.2015. The entire payment of Rs.29 Lakhs was made by the UCO Bank to the corporate debtor by loan taken by the Appellant for payment against the flat. On 03.02.2018, Appellant requested the corporate debtor to cancel the allotment and clear the bank loan amount. Bank has initiated proceedings against the Appellant before the Debt Recovery Tribunal (DRT). Appellant filed a complaint before the UP RERA on 02.03.2019. On 05.08.2019, the UP RERA issued decree against the corporate debtor for payment of outstanding alongwith the interest. In the year 2020 before the DRT, Appellant settled its dues with the bank. The bank after receiving the entire payment of Rs.17 lakhs towards full and final settlement of dues has directed the OA No.617 of 2018 filed by the bank to be withdrawn. By order dated 22.03.2021, CIRP commenced against the Corporate Debtor. On 06.04.2021, Appellant filed its claim in Form CA along with the supporting documents including the RERA order. On query to the Respondent, Appellant filed its claim again in Form C. The Resolution Plan of SRA was approved in the year 2021. Homebuyers have filed an appeal before the Hon'ble Supreme Court in ***"Vishal Chelani & Ors. vs. Debashis Nanda- Civil Appeal No.3806 of 2023"*** where homebuyers who had obtained decree from UP RERA were not treated as homebuyers by the Resolution Professional. Appeal was allowed by the Hon'ble Supreme Court on 06.10.2023 and Appellant of that case was declared as financial creditor alongwith other homebuyers. Appellant- Gaurav Jindal, after the judgment of the Hon'ble Supreme Court filed an IA No.2413 of 2024 seeking a direction to the Respondent to accept the claim at par with other

homebuyers. Notice was issued in the application and by order dated 10.06.2024, the application has been rejected. An affidavit dated 28.02.2025 has also been filed by the Appellant bringing certain documents on record.

3. We have heard Ms. Arohi Bhalla, Learned Counsel for the Appellant and Shri Sumant Batra, Learned Counsel for the Resolution Professional as well as Counsel for the SRA.

4. Counsel for the Appellant submits that the Appellant's claim has been accepted as 'unsecured financial creditor' whereas Appellant was entitled to be treated as homebuyer. It is submitted that the Appellant has not been treated as allottee of Flat No.103, C- Block. It is submitted that the Appellant is also entitled for the benefit of the judgment of the Hon'ble Supreme Court in "***Vishal Chelani & Ors. vs. Debashis Nanda- Civil Appeal No.3806 of 2023***".

5. Counsel for the Resolution Professional refuting the submission of the Appellant submits that the Appellant's claim was rightly accepted as other creditors since it was on the own request of the Appellant that the unit was cancelled. Insofar as the amount paid by the Appellant to the bank, the said fact was not brought into notice of the Resolution Professional and SRA. The amount which has been paid by the Appellant to the bank that amount shall be paid to the Appellant out of the amount reserved in the Resolution Plan in the interest of justice.

6. Counsel for the SRA has also supported the impugned order passed by the Adjudicating Authority.

7. We have considered the submissions of the counsel for the parties and perused the record.

8. In IA No.2413 of 2023, following prayers were made:-

“IA-2413/2024: The prayer made in the application reads thus:

1) Allow this application and direct the Resolution Professional to admit the claim with change in category as per the order of Supreme court in the matter of other homebuyers of the same class.

2) To pass any other order as the Hon'ble tribunal may deem fit in this regard.”

9. The Adjudicating Authority in the impugned order has noted that the plan was approved on 24.04.2024 and the IA No.2413 of 2024 has been filed in the year 2024. Paragraph 12 of the reply of the Resolution Professional filed in IA No.2413 of 2024 has been noticed by the Adjudicating Authority. In paragraph 12 of reply filed in IA No.2413 of 2024 following was stated:-

“12. The Applicant has filed its claim in respect of I unit. In Form CA dated 06.04.2021 filed by the Applicant, it has claimed to have been allotted the Unit No.103, C Block, detailed in Column Nos. 2 and 3 of the Table below. It is respectfully submitted that as per the records (software) of the Corporate Debtor,

the unit mentioned at the table below in Sr. No.1 is a vacant inventory as per the records of the Corporate Debtor. It is pertinent to mention since their name didn't appear in the records of the Corporate Debtor with respect to the unit for which they had filed their claim and is a vacant inventory as per the records of the Corporate Debtor, thus, in the absence of this, they cannot be treated as Homebuyers. Detail of the Unit as per record of Corporate Debtor is provided in the Table below:

Sr. No.	Account No./ Customer ID	Name of the person to whom the Unit has been allotted as per the Applicant	Property Details	Status of Claim
1	02340610005712	Gaurav Jindal	Flat no -103, C block	<p>The records of the Corporate Debtor does not reflect this name as a unit holder of the said unit.</p> <p>The said unit is reflected as hold unit i.e. Vacant inventory as per the records of the Corporate Debtor.</p>

10. The present is a case where Appellant on his own request got his unit cancelled and he has filed the claim with respect to the amount which was paid to the corporate debtor towards allotment of the unit as noted above, allotment was made on 04.06.2025 and the entire amount was paid by the UCO Bank to the corporate debtor. No payment was made by the Appellant to the Corporate Debtor. Appellant has brought on the record the order of

the DRAT dated 10.02.2021 filed as Annexure A3 of the Affidavit which is as follows:-

“IA No.25/2021

1. This matter is taken up by this Tribunal through Video Conferencing.

2. This IA has been filed by the applicant bank seeking permission to withdraw the present OA submitted that during the pendency of present OA, matter has been amicably settled between the parties and in terms of settlement, the applicant bank has already received the entire payment of Rs.17 lacs towards full and final settlement of the dues of applicant bank. It has also been prayed to return the original documents.

3. In view of the submissions made by the Ld. counsel for applicant bank, this IA is hereby allowed and OA No.617/2018 is hereby dismissed as withdrawn. Original documents be returned to the applicant bank as per procedure. Pending application if any shall also be disposed off accordingly. File be consigned to records.”

11. From the above, it is clear that the Appellant entered into settlement with the Bank and paid Rs.17 lakhs towards full and final settlement of the dues, hence, there are no bank dues with respect to the unit in question. Adjudicating Authority in the order although has noticed the amount of Rs.29 Lakhs is reflected as payable by the Corporate Debtor in its books of

accounts and the Resolution Professional shall intimate the bank about the amount payable to them forthwith. We have noticed that the Appellant has already paid the amount to the bank and all dues of the bank are settled with the Appellant. We are of the view that the Resolution Professional shall ensure that the amount of Rs.17 lakhs which was paid by the Appellant is paid to the Appellant from the amount reserved in the Resolution Plan. Counsel for the Resolution Professional submitted that the Appellant having paid the amount, the said amount will be paid to the Appellant.

12. Considering the facts of the present case, we are of the view that the ends of justice be served in disposing of the appeal directing the Respondent to make payment of amount of Rs.17 lakhs which was paid by the Appellant to the bank for arriving at settlement with the bank regarding amount paid by the bank towards unit in question. No further order is required in the facts of the present case. The said payment shall be paid to the Appellant within period of 60 days from today. Appeal is disposed of.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

New Delhi
Anjali