

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

Company Appeal (AT) (Insolvency) No. 991 of 2022

IN THE MATTER OF:

Vishal Chelani & Ors.

...Appellants

Versus

**Debashis Nanda Resolution Professional
Bulland Buildtech Pvt. Ltd.**

...Respondent

Present:

For Appellants : Mr. Shashwat Anand, Mr. Dhruva Vig & Mr. Shashwat Parihar, Advocates.

For Respondent : Mr. Nipun Gautam & Mr. Abhishek Anand, for RP.

O R D E R

[Per: Justice Rakesh Kumar Jain (Oral)]

28.02.2023 The brief facts of the case are that the ‘Canara Bank (Erstwhile Syndicate Bank)’ filed an application under Section 7 of the I & B Code, 2016 (in short ‘Code’) against M/s Bulland Buildtech Pvt. Ltd. (Corporate Debtor) before the ‘Adjudicating Authority’ (National Company Law Tribunal, New Delhi Bench – II) which was registered as Company Petition (IB) No. 1744/ND/2019. This application was filed for the resolution of an amount of Rs. 32.88 crores. The Application was admitted on 22.03.2021, CIRP proceedings were initiated and moratorium was imposed.

2. After initiation of CIRP, public announcement was made by the RP on 26.03.2021 for inviting claims pursuant to which all the five Appellants herein who are stated to be the Home Buyers filed their respective claim

application in Form CA, prescribed under Regulation 8A of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016, (in short '**Regulations**'). However, for the sake of convenience and as an example we are referring the facts in the matter pertaining to Vishal Chelani and Bhavana Chelani otherwise the case of all the five Appellants are similar. Vishal Chelani and Bhavana Chelani filed an application in Form C to the IRP on 21.03.2021.

3. Since the IRP was changed by virtue of an order passed by the Tribunal on 03.09.2021 and Debashis Nanda was appointed as RP, the Applicant (Vishal Chelani and Bhavana Chelani) again filed their claim as a creditor in a class in the prescribed form CA in terms of Regulation 8A on 04.10.2021.

4. The said application did not find favour with the RP and he informed the said Appellant through an e-mail dated 27.10.2021 that :-

Request to file your claim as FC in Form C
Bulland Buildtech ip.bulland@gmail.com

27.10.2021 2.43 PM

To: royharendra@outlook.com royharendra@outlook.com

....

Dear Sir,

This is for your kind information that as you had filed your complaint in RERA, UP, vide complaint no. NCR144/11/0927/2019 and vide its order dated 15th September, 2020, the Hon'ble RERA Bench has ordered for refund till 30.11.2020 but the Corporate Debtor did not comply with the same.

Pursuant to the non-compliance, you had filed for execution of the order dated 15.09.2020 and the Hon'ble RERA Bench had ordered for refund by issuing RC amounting to Rs. 52,23,536.82 dated 27.01.2021.

Based on the above, please note that we are not in a position to admit your claim as a homebuyer. Kindly resubmit your claim as a Financial Creditor in duly filled and signed Form C.

A copy of the Form C is attached herewith for your reference.

..

Debashis Nanda

RP in the matter of Bulland Buildtech Pvt. LTd.

IBBI Reg No., No. IBBI/IPA-003/IP-N00040/2017-18/10316

Address: CS-14, Ansal Plaza, Vaisahali, Ghaziabad, 201010

5. After receipt of the aforesaid e-mail, the said Appellant filed the claim in Form C dated 27.10.2021 prescribed under Regulation 8 of the Regulations. Counsel for the Appellant has submitted that the RP did not reject their claim set up in Form C in writing but orally they were told that they would be treated as Unsecured Financial Creditor.

6. The Appellant again filed their claim in Form CA to the RP on 27.10.2021 and thereafter filed an application bearing I.A. No. 1387 of 2022 in CP (IB) No. 1744/ND/2019 before the Tribunal with a prayer that the RP may be directed to admit the claim of the applicant in Form CA and to treat them as Homebuyers under a class and the 'Committee of Creditors', may direct the RP to call upon the RA to amend the prospective Resolution Plan

after classifying the Applicant as Homebuyers in the class and issue an order of Status quo till the finalisation of the Resolution Plan and convening of the meeting of the 'Committee of Creditors'.

7. The said application was contested by the RP before the Tribunal in which the Tribunal has taken the following view:-

“We are unable to accept the contention of the applicants that they may be permitted to file a claim in Form-CA and direction be given to the RP to consider the claim in Form-CA. In our considered view, once the Ld. UPRERA has passed a decree directing the Corporate Debtor to refund the amount and in pursuant of that, all the applicants had submitted their claim in Form C, which were duly considered by the respondent/ R.P, and only on the ground that the entire claims of the applicants are not admitted and applicants are treated as a Financial Creditor on the basis of that decree and not as a Creditors of Class, we are unable to accept the submission of the applicants to direct the Resolution Professional to admit their claim in Form – CA.”

8. Aggrieved from the order of the Tribunal dated 08.06.2022 all the five Applicants have preferred this appeal.

9. Counsel for the Appellant has vehemently argued that the Tribunal has committed a patent error in holding them as Financial Creditor on the ground that the Appellants had already obtained a decree from the UPRERA regarding refund of their amount.

10. He has argued that the status of the Appellant would remain the same as Homebuyers within a class and should not change even if there is a decree passed in their favour by the UPRERA. In support of his submissions, he has relied upon a decision of the Hon'ble Supreme Court rendered in Civil Appeal No. 689 of 2021 in the case of **Kotak Mahindra Bank Limited vs. A. Balakrishnan & Anr.** decided on 30.05.2022. Para 51 of the said decision read as under :-

“51. Applying these principles to clause (8) of Section 5 of the IBC, it could clearly be seen that the words “means a debt along with interest, if any, which is disbursed against the consideration for the time value of money” are followed by the words “and includes”. Thereafter various categories (a) to (i) have been mentioned. It is clear that by employing the words “and includes”, the Legislature has only given instances, which could be included in the term “financial debt”. However, the list is not exhaustive but inclusive. The legislative intent could not have been to exclude a liability in respect of a “claim” arising out of a Recovery Certificate from the definition of the term “financial debt”, when such a liability in respect of a “claim” simpliciter would be included in the definition of the term “financial debt”

11. On the other hand, Counsel appearing on behalf of the RP has submitted that there is no error in the ‘impugned order’ which may require any interference by this Tribunal. It is submitted that as per scheme of the Act and the ‘Regulations’ the Appellant after obtaining a decree from the UPRERA regarding refund of their amount, invested for the purpose of

purchase of the flat, shall fall within the definition of a Financial Creditor and not in a class of creditor for the purpose of putting up their claim as such before the RP.

12. It is further submitted that the Hon'ble Supreme Court in the same decision in the case of **Kotak Mahindra** (Supra) has decided that in case the Recovery Certificate is issued, the holder of the Recovery Certificate would be a Financial Creditor. He has referred to the Para 84 of the said decision which is reproduced as under :-

“84. To conclude, we hold that a liability in respect of a claim arising out of a Recovery Certificate would be a “financial debt” within the meaning of clause (8) of Section 5 of the IBC. Consequently, the holder of the Recovery Certificate would be a financial creditor within the meaning of clause (7) of Section 5 of the IBC. As such, the holder of such certificate would be entitled to initiate CIRP, if initiated within a period of three years from the date of issuance of the Recovery Certificate.”

13. We have heard Counsel for the Parties and perused the record with their able assistance.

14. There is no dispute that the Appellant had applied for Unit (Flat) in the project called Bulland Elevates floated by the Corporate Debtor.

15. There is also no dispute that the Appellant being the Home Buyers filed a complaint before the Uttar Pradesh Real Estate Regulatory Authority, Gautam Buddha Nagar (in short UPRERA). The said application filed at the instance of the Appellants was allowed by the UPRERA on 04.10.2019. The

complaint No. NCR/144/04/0045/2019 was filed by Vishal Chelani against Bulland Buildtech Pvt. Ltd. under Section 31 of the UP Real Estates (Regulation & Development Act, 216). Pursuant to the order dated 04.10.2019 passed by the UPRERA, a Recovery Certificate was also issued on 21.09.2020 under Section 40 of the Act, 2016 qua the refund of the amount with interest, invested by the Appellant for the purchase of the Flat. It has also come on record that execution was also filed on the basis of the Recovery Certificate.

16. During the course of hearing, Counsel for the Appellant categorically submitted that the Appellants are no more interested in the refund of money but are interested only in the allotment of the Flat which has been three times priced in the Resolution Plan and are now beyond their reach.

17. The question would thus arise as to whether after obtaining the decree for Recovery of amount infused at the instance of the Appellant for which Recovery Certificate has been issued, the Appellant would stand in the category of the class of creditor or is a Financial Creditor for the purpose of filing an application claiming it in Form C instead of Form CA.

18. In this regard, we are guided by the decision of the Hon'ble Supreme Court in the case of **Kotak Mahindra** (Supra) in which in Para 84, while concluding the discussion in the entire judgment, it has been held that once the Recovery Certificate has been issued, the party in possession of the Recovery Certificate is to be considered as a Financial Creditor.

19. The submission made by the Counsel for the Appellant in regard to the observations made in Para 51 of the aforesaid decision would not be of any help to him because ultimately conclusion has been drawn in Para 84 of the aforesaid judgment.

20. No other point has been raised.

21. In view of the aforesaid discussion, we do not find any merit in the present appeal and the same is hereby dismissed. No cost.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mr. Naresh Salecha]
Member (Technical)**

Sim/RR