

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 676 of 2022 &
I.A. No. 4972, 4946 of 2022 & 91, 92, 164, 4029 of 2023

IN THE MATTER OF:

Ajay Singal

...Appellant

Versus

Gaurav Katiyar
Interim Resolution Professional of GRJ
Distributers and Developers Pvt. Ltd. &
Ors.

...Respondents

Present:

For Appellant: Mr. Vivek Kohli, Sr. Advocate, Mr. Sandeep Bhuraria,
Mr. Monish Surendran, Mr. Juvas Rawal, Ms. Nishtha
Grover, Advocates along with Mr. Ajay Singal.

For Respondents: Mr. Sanjeev Singh & Ms. Taniya Bansal, Advocates for
R-48.
Mr. Gaurav Katiyar (IRP in person) & Mr. Rishabh
Jain, Advocate for R-1.
Mr. Piyush Singh, Mr. Vivek Kumar, Mr. Jayant
Upadhyay, Advocates for R-2 to 47.

ORDER
(Hybrid Mode)

Per: Justice Rakesh Kumar Jain (Oral)

18.03.2024: This appeal is filed by Suspended Director of the Corporate Debtor against the order dated 03.06.2022 passed by Adjudicating Authority (National Company Law Tribunal, Court-III) in CP (IB) No. 1066/ND/2020 registered on an application filed under Section 7 by Devinder Yadav & Ors. (Financial Creditor) for the resolution of their debt.

2. The application was admitted, Gaurav Kataria was appointed as the IRP and the moratorium was imposed.

3. In this appeal the appellant has impleaded Gaurav Kataria as Respondent No. 1, Homebuyers from Respondent No. 2 to 47, however, Tata Capital Housing Finance Ltd. was impleaded as Respondent No. 48 by an order of this Court.

4. Shorn of unnecessary details, during the pendency of this appeal, the appellant filed an I.A. No. 546/2024 in which two prayers were made:

“a) To allow the unsecured financial creditors (financial creditors in a class)- namely, the allottees of the Avalon Regal Court Project of the Corporate Debtor, and the secured financial creditor – namely, Tata Capital Housing Financial Limited, to vote on the Project Completion Proposal filed vide Affidavit dated 24.08.2023 and further settlement terms given in the affidavits filed on 04.09.2023 and 23.12.2023 by the Appellant, the contents of which are also reproduced in the current application;

b) If, the voting in terms of (a) above is in favour of the Project Completion Proposal, to allow the Appellant / Applicant to implement the Project Completion Proposal as filed before this Hon’ble Appellate Tribunal vide Affidavit dated 24.08.2023 and further settlement terms given in the affidavits filed on 04.09.2023 and 23.12.2023; and also reproduced in the current application, for completion of the Avalon Regal Court Project of the Corporate Debtor under the aegis of the Interim Resolution Professional and this Hon’ble Tribunal on the principles of “Reverse CIRP” as propounded by this Hon’ble Tribunal;”

5. Vide order dated 27.02.2024, the following order was passed:

“I.A. No. 546 of 2024

This application is filed by the Appellant invoking Rule 11 of National Company Law Appellate Tribunal Rule, 2016 for the following relief :-

“To allow the unsecured financial creditors (financial creditors in a class)- namely, the allottees of the Avalon Regal Court Project of the Corporate Debtor, and the secured financial creditor – namely, Tata Capital Housing Financial Limited, to vote on the Project Completion Proposal filed vide Affidavit dated 24.08.2023 and further settlement terms given in the affidavits filed on 04.09.2023 and 23.12.2023 by the Appellant, the contents of which are also reproduced in the current application;”

Notice in the application. Shri Rishabh Jain appears on behalf of Respondent No. 1, Mr. Vivek Kumar appears on behalf of Respondent No. 2 to 47, Mr. Sanjeev Singh for Respondent No. 48 accepts notice in Court and submits that they do not want to file any Reply to the Application.

Counsel for the Appellant submits that the Appellant has filed three Affidavits, namely, Affidavit dated 24th August, 2023 for the purpose of voting on the Project Completion Proposal and Affidavits dated 4th September, 2023 and 23rd December, 2023 for further settlement terms.

It is submitted that the Tribunal, on an application bearing I.A. No. 136/ 2024, filed by Respondent No. 1, has appointed Mr. Shyam Arora as the Authorised Representative (in short ‘AR’) of the allottees of Avalon Regal Court Project.

It is submitted that the AR and the Secured Creditor (Tata Capital Housing Financial Limited) may be allowed to vote on the Project Completion Proposal which has been made through Affidavit dated 24th August, 2023 and also further settlement terms which have been given in the Affidavits dated 4th September, 2023 and 23rd December, 2023.

The prayer made in the application and submitted before us is not opposed by the Respondents herein.

Thus, in view thereof, the application, in so far as the aforesaid prayer is concerned, is hereby allowed and the AR of the allottees of Avalon Regal Court Project of the Corporate Debtor as well as the Secured Financial Creditor, namely, Tata Capital Housing Financial Limited are permitted to vote on the Project Completion Proposal 24th August, 2023 and also further settlement terms which are given on 4th September, 2023 and 23rd December, 2023.

Let the needful be done within two weeks. The formality shall be carried out by Respondent No. 1 for holding the meeting and e-voting.

After the e-voting, Respondent No. 1 shall file compliance report to this Court with copy to the parties concerned.

It is needless to mention that the prayer 'b' shall be considered only after perusing the Report of Respondent No.1. The prayer (b) is reproduced herein under :-

“b. If, the voting in terms of (a) above is in favour of the Project Completion Proposal, to allow the Appellant / Applicant to implement the Project Completion Proposal as filed before this Hon’ble Appellate Tribunal vide Affidavit dated 24.08.2023 and further settlement terms given in the affidavits filed on 04.09.2023 and

23.12.2023; and also reproduced in the current application, for completion of the Avalon Regal Court Project of the Corporate Debtor under the aegis of the Interim Resolution Professional and this Hon'ble Tribunal on the principles of "Reverse CIRP" as propounded by this Hon'ble Tribunal;”

Adjourned to 18th March, 2024.”

6. In compliance of the aforesaid order, the Respondent No.1 has filed the compliance affidavit dated 14.03.2024 in which it is averred that:

“The Chairman requested the creditors to kindly exercise their discretion (through e-voting) on the settlement proposal based on their assessment and evaluation.

The Authorised Representative informed the IRP on 13.03.2024 (at 07:39 PM through email) that financial creditors in class have casted their votes and the response on the given agenda item is as under:

Agree : 99%
Disagree : 1%

Accordingly, Authorized Representative casted the vote on behalf of Real estate allottees, in accordance with the provisions of section 25A(3) of IBC' 2016.

Voting window was provided by the IRP to the creditors from 10.03.2024 at 07:00 PM till 13.03.2024 at 10:00 PM, Votes casted be creditors are as under:

Name of Creditors	Agree	Disagree
Authorized Representative: Financial Creditor in class (Real Estate Allottees)	54.3%	-
Tata Capital Housing Finance Ltd.	45.7%	-
Total	100.0%	-

The resolution passed by the creditors with 100% majority.”

7. The resolutions having been passed by the Resolution Professional and Authorized Representative are also reproduced as under:

“VOTING ON THE SETTLEMENT PROPOSAL GIVEN BY MR. AJAY SINGAL -EX-DIRECTOR OF "CORPORATE DEBTOR" BEFORE HON'BLE NCLAT VIDE AFFIDAVITS DATED 24.08.2023, 04.09.2023 AND 23.12.2023:

"RESOLVED THAT, consent of the creditors of Avalon Regal Court Project, Bhiwadi, Rajasthan, be and is hereby granted for the approval of the Resolution Plan submitted vide Affidavit dated 24.08.2023 and further settlement terms given in the affidavits filed on 04.09.2023 and 23.12.2023 by Mr. Ajay Singal for resolution of the Avalon Regal Court Project, Bhiwadi, Rajasthan which is also reiterated in I.A. No. 546 of 2024 filed before the Hon'ble NCLAT.

FURTHER RESOLVED that the creditors of Avalon Regal Court Project, Bhiwadi agree to be bound by the terms of the Resolution Plan submitted by Mr. Ajay Singal vide Affidavit dated 24.08.2023 and further settlement terms given in the affidavits filed on 04.09.2023 and 23.12.2023 for resolution of the Avalon Regal Court Project, Bhiwadi, Rajasthan which is also reiterated in I.A. No. 546 of 2024 filed before the Hon'ble NCLAT.

*Agree : 100%
Disagree : 0%”*

8. The compliance report is taken on record.

9. Senior Counsel has now submitted that the Prayer (b) made in the said application (I.A. No. 546/2024) may be considered at this stage which in fact was dependent upon the success of Prayer (a) of the said application about which it is submitted that the resolution has been passed by both the stakeholders with 100% voting rights for the completion of the project.

10. Thus, in view of the aforesaid facts and circumstances, the Prayer (b) is now considered. The Corporate Debtor is allowed to complete the project under the guidance of the IRP, in terms of the affidavit filed on 24.08.2023,

04.09.2023 and 23.12.2023 and also on the principles of reverse CIRP which has been propounded by this Tribunal in the case of “*Flat Buyers Association Vs. Umang Realtech Pvt. Ltd. & Ors.*”

11. The request has been made by the appellant is hereby accepted and as a result thereof, the present appeal is hereby disposed of. Liberty is given to the concerned parties to approach this Court in case of any difficulty faced in completion of the project but the parties shall have to file their application before the NCLT for the purpose of compliances and the RP shall file its report after the completion of the project.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Mr. Naresh Salecha]
Member (Technical)

[Mr. Indevar Pandey]
Member (Technical)

sa/rr