

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH**

**NEW DELHI**

**COMPANY APPEAL (AT)(INSOLVENCY) NO.750/2024**

(Arising out of judgement and order dated 05.03.2024 passed by the National Company Law Tribunal, New Delhi (Bench-III) in IA(IBC)No.5284/2022 in Company Petition (IB) No.440/ND/2021)

**In the matter of:**

360 Realtors LLP  
201, 2<sup>nd</sup> Floor,  
Global Foyer, Sector 43,  
Golf Course Road,  
Gurgaon 122002

Appellant

Vs

Manohar Lal Vij,  
RP of Logix City Developers Pvt Ltd  
AVM Resolution Professionals LLP (IPE)  
8/28, 3<sup>rd</sup> Floor WEA  
Abdul Aziz Road, Karol Bagh  
Delhi-110005.

Respondent

For Appellant:Mr Abhishek Anand, Mr. Vaibhav Mahajan, Mr. Himanshu Singh, Advocates.

For Respondent:Mr. Vishal Hirawat, Advocate.

With

**COMPANY APPEAL (AT)(INSOLVENCY) NO.883/2024**

(Arising out of judgement and order dated 05.03.2024 passed by the National Company Law Tribunal, New Delhi (Bench-III) in IA(IBC)No.5181/2022 in Company Petition (IB) No.440/ND/2021)

**In the matter of:**

360 Realtors LLP  
201, 2<sup>nd</sup> Floor,  
Global Foyer, Sector 43,  
Golf Course Road,  
Gurgaon 122002

Appellant

Vs

Manohar Lal Vij,  
RP of Logix City Developers Pvt Ltd  
AVM Resolution Professionals LLP (IPE)  
8/28, 3<sup>rd</sup> Floor WEA  
Abdul Aziz Road, Karol Bagh  
Delhi-110005.

Respondent

For Appellant: Mr. Abhishek Anand, Mr. Vaibhav Mahajan, Mr. Karan Kohli,  
Ms Harshita Aggarwal and Mr. Nikhil Aswani, Advocates.

For Respondent: Mr Vishal Hirawat and Mr. Abhishek Devgan, Advocates for  
RP.

### **JUDGEMENT**

#### **JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)**

These two appeals are filed against an impugned order dated 05.03.2024 passed by the National Company Law Tribunal, New Delhi (Bench III) in IA No.5181/2022 and IA(IBC) No.5284/2022 in Company Petition (IB) No.440/ND/2021.

2. On 17.08.2022, the Ld. NCLT, New Delhi (Bench III) allowed application under Section 7 of IBC, 2016 of Home Buyers and admitted the Corporate Debtor in CIRP.

3. On 01.09.2022, the appellant filed claim amounting to Rs.10,75,52,989/- as homebuyer in Form CA via email dated 01.09.2022, with all the supporting documents, as a financial creditor in a class with Claim ID LOGIX-823 in Company Appeal (AT)(Ins) No.750/2024 and also on 01.09.2022 the appellant filed claim form via email dated 01.09.2022 alongwith all supporting documents to the tune of Rs.1,79,20,106/- as operational creditor and financial creditor in a class in Company Appeal (AT)(Ins) No.883/2024.

4. On 08.09.2022 the Respondent constituted the Committee of Creditors excluding the appellant. The appellant approached the Respondent to

consider the claim of the appellant in accordance with law and accordingly sought for reconstitution of COC.

5. However, on 17.09.2022 the Respondent convened 1<sup>st</sup> CoC Meeting and the claim of the Appellant was treated as *Nil* value under homebuyer category.

6. On 2<sup>nd</sup> October, 2022 the appellant filed IAs No.5284/2022 and 5181/2022 under Section 60(5) IBC read with Rule 11 of NCLT Rules, 2016 against non-admission/non-verification of its claim and against the exclusion of the Appellant from the Committee of Creditors.

7. It is argued vide the impugned order dated 5<sup>th</sup> March, 2024 the applications were disposed off and he was included in the category of other allottees –both related and unrelated. The impugned order to the effect is as under:-

***“b. Other Allottees-both related & unrelated***

*Resolution applicant proposes to hand over possession of flats after completing construction to all bonafide allottees(s) including RERA decree holders irrespective of whether they (RERA decree holder) have filed their claim or not, or filed their claims after 90 days from CIRP but claims have not been admitted by CIRP due to late filing. Notwithstanding the above, if any claim(s) have been rejected/non-admitted by Resolution Professional, the inventory in the name of such allottees shall be deemed to be free inventory and the Resolution Applicant shall have all the exclusive rights to deal with the same. However, if any allottee have preferred to take legal recourse against the decision of RP then RA hereby agrees to abide by the decision of the Hon’ble Court.”*

8. It is the submission of the learned counsel for the appellant his applications were disposed of without hearing on merits. A bare perusal of IA 5284/2022 would show it was for a direction to the Respondent/RP to *admit and include* Claim ID LOGIX-823 for Rs.10,75,52,989/- as made by the appellant in the capacity of Financial Creditor in the list of Creditors and to

consequently reconstitute the CoC with Appellant as a Member holding corresponding voting share and in the meantime to provisionally admit the said claim on interim and urgent basis.

9. On his application an order dated 04.11.2022 was passed as under:-

*“Heard Mr Abhishek Anand, ld. Counsel appearing on behalf of the applicant.*

*He submits that he is representing one claimant having 103. The claim filed by the applicant has been rejected by the Resolution Professional even though all the relevant documents, records and receipts were submitted along with the claim.*

*Mr Vishal, ld. Counsel appearing for the Resolutin Professional accepts notice and states that no documents have been received alongwith the claim. He further states that in case any direction is issued, the RP will consider the claim.*

*We therefore direct the Resolution Professional to consider the claim and take into account all the documents which have been filed alongwith this IA and take decision within 7 days and communicate the same to the Applicant.*

*We also direct that this decision be placed on record before this Tribunal.*

10. It is argued the additional documents were filed before the RP but the RP did not accept the appellant as a financial creditor and was of the view the arrangement of the appellant with M/s Logix City Developers Pvt Ltd was in the nature of marketing and profit sharing arrangement.

11. It is argued by the appellant though vide order dated 04.11.2022 the Ld. NCLT had directed the RP to take into account all claims filed alongwith the IAs and to communicate the decision to the appellant within seven days and to file a copy too, but the applications were kept pending and were listed alongwith other IAs.

12. Admittedly the decision was taken by the RP vide his order dated 10.11.2022 rejecting the claim of the appellant. It is argued by the RP the appellant did not file any appeal against the order dated 10.11.2022 and *per* Section 42 of the IBC it ought to have been filed within 14 days.

13. Section 42 of the IBC is as under:-

*\*42. A creditor may appeal to the Adjudicating Authority against the decision of the liquidator **accepting or rejecting** the claims within fourteen days of the receipt of such decision.*

14. It was argued by the RP that where the Ld. NCLT had acted upon IAs 5284 and 5181 of 2022, and directed the RP to consider its claim then without a challenge to order dated 10.11.2022 of the RP, the Ld. NCLT was not bound to look into the correctness of the order dated 10.11.2022 of RP, hence it can not be said the impugned order was wrongly passed.

15. We have heard the arguments advanced by both the counsels.

16. We have also perused the impugned order whereby both these applications viz IA No.5181 of 2022 and 5284/2022 were disposed of alongwith other IAs wherein the prayer in other IAs were either to condone the delay in filing the claim of the RERA decree holders or to give a direction to RP to consider and admit their claims. Admittedly in the present IAs there was no such direction sought to refer the matter to RP to consider the claims of the appellants but a direction was sought from the Ld. NCLT to direct the RP to *admit* and *include* its claims in the capacity of Financial Creditor.

17. It is evident to note in its order dated 04.11.2022 the Ld. NCLT had kept IAs No.5284 and 5181 of 2022 pending and the RP was rather directed to place on record his decision before the Tribunal. Further on both these IAs

*viz.* No.5181/2022 and 5284/2022 the arguments were finally heard on 1.11.2023 despite the decision dated 10.11.2022 of the RP on record, and parties were even given liberty to file written synopsis alongwith case laws. However, if one peruse the impugned order the arguments made in IA No.5284/2022 as well as in IA No.5181/2022 were never discussed and such applications were , disposed off in terms of orders passed on 13.09.2023 by the Ld. NCLT though such orders had nothing to do with issues involved in the present IAs filed by the appellant. The issue in those applications was to consider the belated claims or to hand over the possession of the flats to bona fide allottees (including RERA decree holders) irrespective of whether they (RERA decree holders) have filed their claims or not or filed their claims after 90 days from CIRP date but claims were not admitted due to late filing and the Ld. Counsel for RP rather submitted all bona fide allottees irrespective of whether they have filed claims or not or had filed belated claims will be given possession of the flats. Thus the issue involved in those applications was entirely different as were related to RERA decree holders and such applications *viz.* IA No.3182/2023, IA No. 20321/2023, IA No.1154/2023, IA No. 2292/2023, IA No.2921/2023, IA No.3991/2023, IA No.4183/2023, IA No.4184/2023, IA No.4254/2023 and IA No.4278/2023 were on different facts. Thus it would be appropriate to set aside the impugned order *qua* applications IA No.5181/2022 and 5284/2022 and we request the Ld. NCLT to look into these applications afresh and dispose them of by passing a speaking order.

18. Both the appeals are thus allowed. Pending applications, if any, are disposed off.

**(Justice Yogesh Khanna)**  
**Member (Judicial)**

**(Mr. Ajai Das Mehrotra)**  
**Member (Technical)**

**Dated:15-01-2025**

**BM**