NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 234 of 2024

[Arising out of the Impugned Order dated 12.03.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-I in Company Application No. 434 of 2023]

In the matter of:

Mr. Prakasarao V.S. Yadavilli,
an adult Indian Individual,
residing at 4B, Nainital Tower,
Hill County, Nizampet Road,
Bachupally, Hyderabad - 500090

...Appellant

Versus

M/s. Grant Thornton, the Claims
Management Advisor of Infrastructure
Leasing & Financial Services Limited,
having address at the
IL&FS Financial Centre, Plot C22,
G-Block, Bandra-Kurla Complex,
Bandra (East), Mumbai – 400 051

...Respondent

Present:

For Appellant : Mr. Deepak Biswas and Mr. Sanampreet Singh, Advocates.

For Respondent : Mr. Shwetaank Nigam and Mr. Rishi Badraj, Advocates.

WITH

Company Appeal (AT) No. 236 of 2024

[Arising out of the Impugned Order dated 12.03.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-I in Company Application No. 424 of 2023]

In the matter of:

1. Mr. Lalatendu Swain,

an adult Indian Individual,
residing at F-10A, Shimla Tower,
Hill Country, Nizampet,
Bachupally, Hyderabad, 500090

…Appellant No.1

2. Mrs. Sucheta Swain,
an adult Indian Individual,
residing at F-10A, Shimla Tower,
Hill Country, Nizampet
Bachupally, Hyderabad, 500090

…Appellant No.2

Versus

M/s. Grant Thornton, the Claims
Management Advisor of Infrastructure
Leasing & Financial Services Limited,
having address at the
IL&FS Financial Centre, Plot C22,
G-Block, Bandra-Kurla Complex,
Bandra (East), Mumbai – 400 051

…Respondent

Present:

For Appellant : Mr. Deepak Biswas and Mr. Sanampreet Singh, Advocates.

For Respondent : Mr. Shwetaank Nigam and Mr. Rishi Badraj, Advocates.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

Present is a set of two appeals filed under Section 421 of the Companies Act, 2013 arising out of the Orders dated 12.03.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in Company Application No. 424 of 2023 filed by Mr. Lalatendu Swain & Or and Company Application No. 434 of 2023 filed

by Mr. Prakasarao V.S. Yadavilli respectively. By the impugned order, the Adjudicating Authority has rejected their application vide which claims were raised by them in Claim Form-C before the Claim Management Advisor as non-maintainable. Aggrieved by the impugned order, the present appeals have been preferred by the Appellants. Since, on points of facts and law and also the grounds on which both the appeals have been premised are common, it would suffice to confine ourselves to the pleadings made in Company Appeal No. 424 of 2023 to decide both these appeals at hand.

2. The salient points in the present facts of the case which require to be noticed for consideration of the matter before us is that the Appellants had entered into an Agreement for Sale (**"Agreement"** in short) with Maytas Property Ltd. (**"Maytas"** in short) on 15.11.2007. Subsequently, on 24.07.2008 the Appellants and Maytas executed a Registered Sale Deed and an Agreement for Construction (hereinafter called **"Construction Agreement"**) in terms of which Maytas was to complete construction of the residential project within 20 months of execution of Agreement which date was 15.07.2009. As Maytas failed to complete the project by the said date, IL&FS Group was inducted in as the new promoter in place of Maytas vide an order of the Company Law Board, New Delhi on 13.06.2011. The Occupancy Certificate for the residential project finally became available on 07.11.2015 which date was after a lapse of six years and three months from the due date of completion of 15.07.2009 as per Agreement. Subsequently the Board of Directors of IL&FS Ltd. was suspended and M/s Grant Thornton was appointed as Claim Management Advisor (**"CMA"** in short) for the IL&FS Ltd. The Appellant filed their principal claim before the CMA of

Rs 25,93,498/- and interest of Rs 9,14,048/- which were however rejected by the CMA. Aggrieved by the rejection of the claim by the CMA, the Appellant filed Company Application No. 424 of 2023 in Company Petition No. 6368 of 2018 before the Adjudicating Authority. The Company Application was dismissed by the Adjudicating Authority on 12.03.2024 and aggrieved by the impugned order, the Appellants have preferred the present appeal.

3. We have heard Shri Deepak Biswas, Ld. Advocate for Appellant and Shri Shwetaank Nigam, Ld. Advocate representing Respondent.

4. Making his submissions, the Ld. Counsel for the Appellants submitted that the Appellants who are old citizens were put to lot of inconvenience on account of late handing over of their houses, the construction of which was initiated by Maytas. As against assured completion date of 15.07.2009, they received the occupancy certificate after more than six years on 07.11.2015 entitling them to compensation for delay as per Agreement entered into with Maytas. The Appellants therefore filed their claim in Form-C before the CMA alongwith documents supporting their claim in June 2020. The total claim filed before the CMA was Rs 35,07,546/- including interest amount of Rs 9,14,048/- . It was clarified that the claim included compensation for delay in handing over possession of the apartment, refund of car parking space charges, Glass Sky Lounge, laundry area facility, service tax refund etc. These claims were rejected by the CMA on 09.10.2020 on the ground that the claims required to be adjudicated upon by a competent court of law. This stand was reiterated by the CMA again on 21.11.2020 that the claim items needed adjudication.

5. It was vehemently contended by the Appellants that it was wrong on the part of the CMA to contend that the claim filed by the Appellants required adjudication by a court of law. While conceding the fact that the CMA whose functions are akin to that of Resolution Professional and hence not vested with adjudicatory powers, nevertheless, the CMA cannot absolve itself of the responsibility of verifying the claims. Since the claims staked by the Appellants with regard to damages on account of delay in granting possession is clearly provided for in Clause 7(d) the Agreement, this item would not have required any further adjudication. Furthermore, the claim was in the nature of liquidated damages and hence there was no requirement for the Appellant to institute any proceeding before an appropriate Civil Court to determine the extent of damages. The Adjudicating Authority has also failed to appreciate the documents produced by the Appellants to demonstrate that the sum of money spent on rent by the Appellants on account of delay in granting possession amounted to damages. It was also contended that the Adjudicating Authority had also erroneously held that since IL&FS was inducted in as a strategic investor in place of Maytas, no claim could lie against them. It was also asserted that the Adjudicating Authority by affirming the rejection of the claim by the CMA and treating the claims as non-maintainable had rendered the Appellants remediless.

6. Refuting the contentions of the Appellants, the Ld. Counsel for the Respondent-CMA submitted that CMA was required to adopt the principles and methods directed for verification of claims under the IBC. It was submitted that any claimant submitting their claim was required to substantiate the same with

relevant proof of claim under Regulation 12 of the IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016(**"CIRP Regulation"** in short). It was further added that Regulation 13 of the CIRP Regulations mandates verification of the status of the claims submitted by creditors and based thereupon maintain a list of creditors alongwith amount claimed by them and the amounts of their claims as admitted. It was contended that the claim of Rs 35,07,546/- included several items which could not have been admitted by the CMA without adjudication.

7. It was contended that the Appellants had sought claim under the heading Loss of Rent which was not provided for in the Agreement as the basis for quantification of the damages. The CMA had also not provided any supporting proof by which the IL&FS or Maytas was obligated to reimburse the Appellant by way of rent in relation to any alternative accommodation as a financial loss to the Appellant. Therefore, the CMA was constrained to not accept the claim of damages on the basis of loss of rents. The CMA could not have quantified the damages as this exercise would have entailed adjudication which power fell outside the purview of the limited mandate provided to the CMA. The claims could not have been determined by the CMA at his level before it was quantified by an adjudicatory authority by way of trial and production of evidence. Since the relevant component of claim required adjudication, the CMA had classified the claims as "put under adjudication" and intimated the Appellants. Hence it was contended by the Respondent that the Adjudicating Authority committed no mistake in finding the claims application submitted by the Appellants as non-maintainable and rightly rejected the same.

8. We have duly considered the arguments advanced by the Learned Counsel for the Appellant and Respondent and perused the records carefully.

9. The short point to be answered is whether in the facts of the present case the decision of the CMA to place these claims in the category of "put under adjudication" was justified.

10. At the very outset, it may be useful to go through the relevant clauses contained in the Agreement which provisioned for damages. The relevant clauses read as under:

> ***Agreement of Sale***
>
> ***7. Construction***
>
> *a. The Developer and Land Owners assures to complete the construction of the Scheduled Apartment within 20 months from the date of execution of this Agreement and subject to the availability of steel or other construction material and/or any other causes beyond the control of the Developer.*
>
> *b. Provided that the Developer shall have a further grace period of three (3) months.*
>
> *c. .....*
>
> *d. In the event of any further delay beyond the time stipulated in Clause 7(a), 7(b) and 7(c), the Developer and the Land Owner shall pay the Purchaser an amount of Rs 5/- per sft of contracted built-up area for every month of delay up to a maximum of 8 months. This amount shall be adjusted out of the amount still due and receivable from the Purchaser(s) or if the Purchaser(s) has paid the amount in full and there are no further amounts payable to the Developer, the same shall be paid to the Purchaser on the 5th of each following calendar month.*
>
> *(Emphasis supplied)*

It is an undisputed fact that the Agreement provided for making certain payments on delay in construction and also provided for the basis of making

such a payment. We also notice that this Agreement was also between Maytas and the Appellants and IL&FS is not a signatory.

11. At this juncture we would like to add that the Ld. Counsel for the Appellants had made a submission that the Appellants while filing the claims before the CMA in June 2020 had gone a little overboard and included other items like car parking space charges, Glass Sky Lounge, laundry area facility, service tax refund etc. which they do not wish to press any further. That being so we will confine ourselves hereinafter only to the issue of damages claimed by the Appellants on account of delay in handing over possession of their houses.

12. When we look at the sequence of events, we find that it is an undisputed fact that handing over of the possession of the property to the Appellants took place in 2015 instead of 20 months from the date of the execution of the Agreement. The Appellants filed their claims before the CMA in Form C only on 29.06.2020 as may be seen at page 216 of Appeal Paper Book ('**APB**' in short) which is as reproduced below:

SCHEDULE
FORM C
PROOF OF CLAIM BY FINANCIAL CREDITORS

4. Total Amount of Claim (Including any interest as at the claim date)
Currency Type- INR
Principal Claim - 2593498
Interest - 914048
Panel Interest -
Total Claim – 3507546

From the claim form it becomes clear that the principal claim was not segregated into sub-components.

13. On receipt of the claims, we find that the CMA sent a detailed reply to the Appellants on 09.10.2020 explaining their stance on these claims and the relevant paras from the said reply id as reproduced below:

"ILFS Claims

Dated: 9th October 2020 at 20:12

To: Lalatendu Swain

Cc: Vipra Patangia

Dear Sir,

This is in relation to your claim filed in form C for INR 35,07,546 on Hill County Properties Ltd ('HCPL'). Please note the following in respect of your claim:

1. ***Loss of Rent**-In relation to rent claimed by you for the alternate accommodation, we understand that there is no document entered into between HCPL and the you pursuant to which HCPL has undertaken to reimburse such rent. So there is no direct commitment to pay the rent. In relation to your claim on the same in the form of losses caused to you, the same is a claim that would be required to be adjudicated upon. We do not have the powers to adjudicate upon a claim under he claims management process.*
2. ***Car parking refund.....***
3. ***Refund of Service Tax....***
4. *Further, in respect of your claim for non-provision of sky lounges, non-provision of laundry area, mental agony and interest on delayed payment. Please note that any problem or dispute in relation to the commitments provided by HCPL, is a claim with regard to deficiency of service and other components needs to be led with evidence, and be adjudicated upon. As the claims management advisor, we are not in a position to adjudicate over claims. We merely have the power and authority to verify claims, and establish the existence of debt...."*

From the above reply it is clear that the CMA has categorically stated that the reimbursement of rent was not provided for in any document entered into between the Appellants and Maytas and there was no commitment to pay rent.

14. The Appellants being dissatisfied with this response sent an email to the CMA on 19.10.2020 and again insisted review of their claim on the grounds that the Agreement executed with Maytas clearly provided for compensating buyers for delay in completion of the project. The Appellants also provided copies of some Rental Agreements to enable quantification of their claim for "Loss of Rent". This email may be seen at page 223 of APB.

15. In their response, the CMA again sent a clarificatory letter explaining how and why the determination of damages would require adjudication as placed at page 224 of APB, the relevant excerpts of which are as reproduced:

> *"Sent: Sat, 21 Nov 2020*
> *To: Lalatendu Swain*
> *Cc: Vipra Patangia; Rakshit Alva*
> *Subject: Re: IL&FS claims: HCPL- Lalatendu Swain*
>
> *Dear Sir,*
> *…….*
>
> *a.* ***Loss of Rent****-*
>
> *We have reviewed the Agreement for sale in relation to your claim for compensation for the delay in construction. We understand that this is a specific amount that you would have a right to claim on account of a delay in completion of construction for reasons which are not beyond the normal control of HCPL. Please note that as the claims management advisor we do not have the power to determine the reason for the delay in construction, or whether it was on account of reasons within or outside the normal control of HCPL. In fact, such a determination would require adjudication…."*

16. Having noted the above we now propose to answer the question whether the decision of the CMA to place these claims in the category of "put under adjudication" was justified. In terms of the claims management process under

the resolution framework, there is a clear distinction between verification of claim and adjudication of claim. We notice that the CMA has categorically and consistently stated that the reimbursement of rent was not provided for in any document entered into between the Appellants and Maytas and there was no commitment to pay rent to the Appellants. When we look at clauses of the Agreement also, we do not find any provision for payment of loss of rent or alternative accommodation rent being the relevant parameter for quantification of damages for delay in construction. Given this backdrop, the CMA was right in asserting that he cannot verify any claim basis rental agreements unilaterally produced by the Appellant when the Agreement did not provide scope for such rental agreements to determine the damages for delayed possession. Under such circumstances, we do not find it either unreasonable or unfair on the part of the CMA in having pointed out that any claim premised on the above parameters would fall in the realm of adjudication which would be beyond the limited jurisdiction of the CMA. The CMA clearly did not have the jurisdiction to determine the claim, nor are there any mitigating factors in the IBC or the CIRP Regulations framed thereunder bestowing any such adjudicatory jurisdiction on the CMA. Any attempt made towards assuming any sort of adjudicatory jurisdiction would have made the CMA breach the boundaries set by the statutory framework of IBC for a CMA to only verify and collate claims and does not encompass the adjudication of claims. Since the relevant component of claim required adjudication, the CMA had correctly classified the claims in the "put under adjudication" category. In the light of the above, we also do not see any reason to differ with the findings of the Adjudicating Authority that *"the claims*

on account of delayed delivery of flat and mental agony is in nature of unliquidated damages and there is no agreement between the parties for payment of the same, hence the same cannot be admitted."

17. In result, we find no reasons to interfere with the impugned order. There is no merit in both the Appeals. The Appeals are dismissed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi
Date: 16.01.2025

Abdul/ Harleen