

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

**Company Appeal (AT) (Insolvency) No.2021 of 2024**  
**& I.A. No.7583 of 2024**

(Arising out of Order dated 09.08.2024 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in I.A. No. 3816/2022, I.A. 6240/2023, I.A. 1452/2024, I.A. 3753/2024 and in Company Petition No. (IB)-597(PB)/2021)

**IN THE MATTER OF:**

Mr. Ashmeet Singh Bhatia

...Appellant

Versus

Three C Properties Pvt. Ltd.

(Through its Resolution Professional) & Ors.

...Respondents

**Present:**

**For Appellant : Mr. Gaurav Mitra, Mr. Sonam Sharma, Ms. Riddhi Jain, Ms. Lavanya Pathak, Advocates.**

**For Respondent : Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Advocates for RP.**

**Mr. Abhijeet Sinha, Sr. Advocate with Mr. Kumar Mihir, Mr. Athul Joseph, Advocates for R-2 to 35.**

**Mr. Raj Kamal and Mr. Aseem Atwal, Advocates for R-55.**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

This Appeal has been filed challenging order dated 09.08.2024 passed by National Company Law Tribunal, New Delhi Bench (Court-II), by which order Section 7 application filed by Financial Creditor in class has been admitted and IA No.3753 of 2024 and IA No.6240 of 2023 filed by the Applicant were rejected and IA No.1452 of 2024 and IA No.3816 of 2022 were disposed of.

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

- (i) The Corporate Debtor – M/s Three C Properties Pvt. Ltd. was allotted a Commercial Plot No.H-10, Sector 98, Noida on 26.04.2011 measuring 24,000 sq. mtrs. The Noida sanctioned a revised layout plan for the land in question comprising five towers, two commercial and three residential, sharing common facilities, amenities, roads etc. The conditional permission letter dated 21.01.2017 obtained by the Corporate Debtor for bifurcation of two sub-plots from the Commercial Plot No.H-10. Permission was obtained on 21.01.2017 for bifurcation of the Commercial Plot No.H-10. A Tripartite Sub-lease Deed dated 27.06.2017 was also executed.
- (ii) The commercial construction of the project was given to two subsidiaries of the Corporate Debtor (“**CD**”) and registration was obtained by the Promoters in Uttar Pradesh Real Estate Regulatory Authority (“**UP RERA**”) as residential project namely – Lotus Isle (Residential) on 11.08.2017. Builder Buyers Agreements were executed by the Corporate Debtor, allotting different units in the residential towers to be constructed in the Plot in question. As per Builder Buyers Agreement, the possession was to be handed over to the allottees within 36 months. Commercial spaces were

constructed, however, the residential units were not constructed within the time under which the possession was promised to be handed over to the allottees.

- (iii) A Section 7 application was filed by 51 allottees of the residential project, holding 29 units in the Lotus Isle (Residential) alleging default of an amount of Rs.70,93,58,956/- and seeking initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor, it having committed default.
- (iv) The Appellant, who is not allottee of residential Tower or commercial spaces, filed various applications in Section 7 application CP No. (IB)-597(PB)/2021 being IA No.3816 of 2022 under Section 60(5) r/w 65 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”), IA No.1452 of 2024 and IA No.3753 of 2024.
- (v) Section 7 application filed by Financial Creditors in class, was opposed by the Corporate Debtor. The Adjudicating Authority heard the Financial Creditor, Corporate Debtor as well as the Applicant/ Appellant and by the impugned order, admitted Section 7 application, recording finding of debt and default. IAs filed by the Appellant being IA No.3816 of 2022 was disposed of holding that IA, does not satisfy the requirement/ ingredients of Section 65 of the IBC. IA

No.1452 of 2024 was also disposed of by the Adjudicating Authority and other two IAs were rejected.

3. We have heard Shri Gaurav Mitra, learned Counsel appearing for the Appellant and Shri Abhijeet Sinha, learned Counsel appearing for the Respondent.

4. Shri Gaurav Mitra, learned Counsel for the Appellant has raised only one submission challenging the impugned order that the application under Section 7 filed by creditors of class (allottees), does not fulfill the threshold limit of 10% of allottees, which is required for filing an application under Section 7. It is submitted that the allotment made by Noida was of commercial plot measuring 24,000 sq. mtrs and as per the revised sanctioned plan, only 60% was to be constructed as commercial, whereas only 40% was permissible for development of residential purpose. In the residential towers, 255 units have been allotted and the Applicants, who claimed to have filed Section 7 application were only 29 unit holders. The Adjudicating Authority erred in holding the threshold to be met only computing the number of units in the residential towers. It is submitted that the project being one, allotment of the commercial units was also required to be added for finding out the threshold. It is submitted that project being one, bifurcating the commercial units, the Applicants did not fulfill 10% threshold as prescribed by the IBC. Hence, the application filed under Section 7, did not deserve admission. It is submitted that order of admission being contrary to the provisions of the IBC, deserve to be set aside. Learned Counsel for the Appellant further

submits that this contention of the Appellant that Applicants do not fulfill the threshold of 10% was specifically raised before the Adjudicating Authority, which has also been noticed, but has been erroneously rejected. The learned Counsel for the Appellant further submits that the Builder Buyers Agreement mentions the project as Lotus Isle. The Promoters, however, got registered the project in UP RERA as Lotus Isle (Residential).

5. Shri Abhijeet Sinha, learned Senior Counsel appearing for the Respondent submits that the Appellant has no locus to file this Appeal. The Appellant is neither allottee of the project Lotus Isle (Residential), nor even allottee of commercial units, constructed on the plot in question. He has no locus to challenge the order admitting Section 7 application filed by Financial Creditors in a class. The Appellant having no concern with the project in question, has been filing applications after applications in the proceedings to cause delay and putting hindrance in the proceedings. The Appeal is liable to be dismissed on the ground of lack of locus of the Appellant to challenge order of Section 7 application. The Appellant in no manner being affected, could not be allowed to challenge the impugned order. It is submitted that Appellant has no concern with the project in question. He claims to be a stakeholder in another sister company of Corporate Debtor GGPPL, which has nothing to do with the project in question. Shri Sinha submits that no submissions were advanced by the Appellant on the applications, which have been filed by the Appellant, except questioning the non-compliance of threshold in Section 7

application. Shri Sinha, however, submits that threshold in Section 7 application was fully complied. Registration of the project is in the name of Lotus Isle (Residential) in UP RERA. Shri Sinha has referred to Volume-4, page 898, where registration details of the project has been filed by the Appellant, are on the record, which mentions project name as - Lotus Isle (Residential). It is submitted that the project is a real estate project as has been referred to in Section 7, sub-section (1) second proviso, and the project was registered with UP RERA and contains the definition as occurring in Section 7. For finding out threshold, the project contains 255 units allotted in the residential project and application under Section 7 has been filed by 29 unit holders. Hence, the threshold was fully met and submission advanced by learned Counsel for the Appellant has no legs to stand.

6. We have considered the submissions of learned Counsel for the parties and perused the record.

7. The preliminary objection, which has been raised by learned Counsel for the Respondent regarding the locus of the Appellant to file this Appeal, needs to be first examined.

8. It is not the case of the Appellant that Appellant is allottee of any unit in the Lotus Isle (Residential), which is a real estate project in question. It is not the case of the Appellant that Appellant is even allottee of any commercial unit, which have been constructed on the commercial plot allotted to the CD. The Appellant claims to be a stakeholder in

another sister concern GGPPL. By the impugned order, the Adjudicating Authority admitted Section 7 application filed on behalf of allottees, Financial Creditor in a class, finding debt and default. By admission of Section 7 Application, the Corporate Debtor or allottees of project may have any grievance, a person, who is neither allottee of the project, nor has any stake in real estate project, which is subject matter of the insolvency, cannot be allowed to challenge the order admitting Section 7 application. Section 7 application has been admitted on account of debt and default by the Corporate Debtor, who committed default in delivering the possession of the unit to the allottees. We, thus, found substance in the submission of learned Counsel for the Respondent that the Appellant has no locus to challenge the order admitting Section 7 application.

9. Learned Counsel for the parties having addressed submissions with regard to threshold in respect of Section 7 application, to satisfy ourselves, we have proceeded to examine the contention regarding non-fulfillment of threshold.

10. From the materials brought on record, it is clear that allotment was made vide Lease Deed dated 26.04.2011 of Plot No.H-10, Sector 98, Noida. The Revised Sanctioned Plan approved by the Noida has been brought on the record at page 761 of the Appeal as Annexure A-23, which revised sanctioned plan dated 19.05.2015 refers to permissible norms of development. Under the heading Permissible Norms of Development, residential is provided 40% and Commercial is 60%. Table Permissible Norms of Development is as follows:

PERMISSIBLE NORMS OF DEVELOPMENT					
	DESCRIPTION		%	Permissible Area (SQM.)	Proposed Area
A)	Residential	Max	40%	45,120.000	44,838.933
B)	Commercial	Max	60%	67,680.000	67,565.195
TOTAL SITE AREA				112,800.000	112,404.128

11. Thus, the commercial plot allotted was for mixed plan use, which contained both, commercial use and residential use. The learned Counsel for the Respondent has referred to registration of project with RERA, which was registered on 11.08.2017. Registration details at page 898 of the Appeal paper book is as follows:

**“Project Detail**

**Project Basic Information**

Project Name	LOTUS ISLE (RESIDENTIAL)
Registration Number	UPRERAPRJ5442
Project Registration Date	11-08-2017
Project Type	Ongoing
Project Coordinator Number	8505833393
Proposed Period	56
Original Start Date:	31-01-2015
Modified Start Date:	30-08-2016
Declared Date of Completion	31-03-2021”

12. Section 7 application filed by the Financial Creditors in class is dated 25.09.2021, is much subsequent to the registration of the project



Lotus Isle (Residential). The Applicants in the application under Section 7 have given relevant facts. The copy of the application is filed as Annexure A-44, which clearly mentions that the project was bifurcated by permission dated 31.01.2017. Section 7 application was filed by the Financial Creditor in a class alleging default committed by the Corporate Debtor in giving possession of the units, within the time given in the Builder Buyers Agreement. Several amounts have already been disbursed by the Financial Creditors in a class in residential units consisting three towers wherein total allotted units are 255, out of which 29 unit holders were Applicants in Section 7 application. The argument, which was advanced by the Appellant regarding non-fulfillment of threshold has been noticed by the Adjudicating Authority and in paragraph 12, said issue has been noticed in following words:

“12. The issue as to whether Applicants in the present application constitute 10% of the homebuyers is concerned, it can be seen from Annexure A-3 (Page 207) of the petition, that the total residential unit qua the project are 255, thus the allottees of 29 units would constitute 10% of total number of allottees.”

13. The Adjudicating Authority has considered the submission and has noticed the judgment of the Hon'ble Supreme Court in ***Manish Kumar vs. Union of India – (2021) 5 SCC 1*** in paragraph 17, which is as follows:

“17. As has been noted hereinabove, in terms of the definition of the Real Estate Project given in clause (zn) of Section 2 of Real Estate (Regulation and Development) Act,

2016, Real Estate Project includes even the conversion of an existing building or a part thereof into apartments. Thus, the 10% allottees qua the Real Estate Project can maintain the present petition. The issue could be addressed by Hon'ble Supreme Court in **Manish Kumar vs. Union of India** 2021 (5) see 1. Para 176 and 177 of the judgment reads thus:

*"176. We have referred to the definition of the word "allottee" in Section 2(d) of the RERA. In regard to a real estate project, all persons, who are treated as allottees, as per the definition of allottee would be entitled to be treated as allottees, for the purpose of Section 5(8)(f) (Explanation) and also, for the purpose of the impugned provisos. All that is required is that the allottees must relate to same real estate project. In other words, if a promoter has a different real estate project, be it in relation to apartments, in the case of an application under Section 7, those would not be reckoned in computing one-tenth as well as the total allotments.*

*177. The rationale behind confining allottees to the same real estate project is to promote the object of the Code. Once the threshold requirement can pass muster when tested in the anvil of a challenge based on Articles 14, 19 and 21, then, there is both logic and reason behind the legislative value judgment that the allottees, who must join the application under the impugned provisos, must be related to the same real estate project. The connection with the same real estate project is crucial to the determination of the critical mass, which legislature has in mind, as a part of its scheme, to streamline the working of the Code. If it is to embrace the total number of allottees of all projects, which a promoter of a real estate project, may be having, in one sense, it will make the task of*

*the applicant himself, more cumbersome. It becomes a sword, which will cut both ways. This is for the reason that the complaints, relating to different projects, may be different. With regard to one project of a promoter of real estate project, maybe, in the advanced stage, the allottees in a particular project, may not have much of a complaint. The complaint, in relation to yet another project, may be more serious. If the complaint in respect of the latter, attracts the attention of a critical mass of allottees, and the proposed applicant is part of that project in the said project, then, it may be easier for the allottees to fulfil the statutory mantra in the impugned provisos, with the junction of likeminded souls. If, on the other hand, the requirement was to make a search for allottees of different projects, as would be the case, if the entirety of the allottees, under different projects, were to be reckoned, the task would have been much more cumbersome. The requirement of the allottees, being drawn from the same project, stands to reason and also does not suffer from any constitutional blemish, as pointed out.”*

14. The Adjudicating Authority has returned a finding in paragraph 17 that 10% allottee of the real estate can maintain a petition. It is not a dispute between the parties that total units for the residential project are 255 and the application was filed by 29 unit holders. We, thus, are satisfied that application filed by Financial Creditors in a class, fulfill the threshold as provided under Section 7, second proviso and the submission advanced by the learned Counsel for the Appellant that application did not fulfill the threshold limit, cannot be accepted.

15. No other submissions have been made by the learned Counsel for the Appellant, we in view of the above observations and conclusions, do not find any ground to interfere with the impugned order. The Appeal is dismissed. Pending IAs, if any, are also disposed of. There shall be no order as to costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**[Arun Baroka]  
Member (Technical)**

**NEW DELHI**

**22<sup>nd</sup> November, 2024**

Ashwani