

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

Company Appeal (AT) (Insolvency) No. 268 of 2026

[Arising out of Order dated 03.02.2026 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh, Court I, Chandigarh in I.A. No.(I.B.C)/1537(CH)2025 in Company Petition (IB) No.45/Chd/Hry/2024]

IN THE MATTER OF:

1. Mr. Hemant Yadav

S/o Shri Shri Mahabir Prasad Yadav
R/o 74, Kesar Kutir, Paprawat,
South West Delhi, Delhi-110043
Email: atalvsood@gmail.com

2. Mr. Rakesh Vasandani

R/o F-7, Lajpat Nagar-II,
New Delhi-110024
Email: atalvsood@gmail.com

3. Mr. Pratul Kumar Madan

R/o B-1102, Heritage Max Apartments,
Sector-102, Kherki Majra,
Dhankot (52), Gurugram-122018
Haryana
Email: atalvsood@gmail.com

4. Mr. Mukesh Yadav

R/o MD-28, Eldeco Mansion,
Sohna Road, Sector-48,
Gurugram-122018, Haryana
Email: atalvsood@gmail.com

...Appellants

Versus

1. IDBI Trusteeship Services Limited

Having its Registered Office at:
Ground Floor, Universal Insurance Building,
Sir Phirozshah Mehta Road,
Fort, Mumbai -400001.

2. Mr. Santanu Kumar Samanta

Vatika Limited
Through, Interim Resolution Professional
15/775, Vasundhara, Ghaziabad,
Uttar Pradesh-201012
Email.: jayant_prak:ash@yahoo.com

...Respondents

Cont'd.../

Present:

For Appellant: Mr. Krishnendu Dutta and Mr. Sanjiv Sen, Sr. Advocates with Mr. Ashish Aggarwal, Mr. Nalin Dhingra, Mr. Yash Tandon, Mr. Prahalad Balaji, Ms. Jharna Singh and Ms. Simran Gupta, Advocates.

For Respondents: Mr. Gopal Jain, Mr. Abhijeet Sinha, Sr. Advocates with Mr. Nalin Kohli, Ms. Meghna Mishra, Mr. Nikhil Ratti Kapoor, Adv. Yashodhara Gupta, Mr. Kevin Chadha and Mr. Saikat Sarkar, Advocates.

Mr. Gaurav Mitra and Mr. Adhish Srivastava, Advocates for IRP.

Mr. Akshay Srivastava, Mr. Vivek Kumar and Ms. Raveena Paniker, Advocates for Interveners.

With

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For Respondents: **Mr. Gopal Jain, Mr. Abhijeet Sinha, Sr. Advocates with Mr. Nalin Kohli, Ms. Meghna Mishra, Mr. Nikhil Ratti Kapoor, Adv. Yashodhara Gupta, Mr. Kevin Chadha and Mr. Saikat Sarkar, Advocates.**

Mr. Gaurav Mitra and Mr. Adhish Srivastava, Advocates for IRP.

Mr. Akshay Srivastava, Mr. Vivek Kumar and Ms. Raveena Paniker, Advocates for Interveners.

J U D G M E N T

ASHOK BHUSHAN, J.

These two appeals have been filed by the Homebuyers of the Corporate Debtor – Vatika Ltd. challenging two separate orders passed by National Company Law Tribunal, Chandigarh Bench, Court-I, Chandigarh.

Company Appeal (AT) (Ins.) No.268 of 2026 has been filed challenging order dated 03.02.2026 passed by the Adjudicating Authority rejecting IA (I.B.C)/1537(CH)2025 filed by the Appellants under Section 65 of the I&B Code. Company Appeal (AT) (Ins.) No.269 of 2026 has been filed by the Challenging the order dated 03.02.2026 admitting Section 7 application filed by IDBI Trusteeship Services Ltd. In CP(IB) No. 45/Chd/Hry/2024. Brief background facts necessary to be noticed for deciding the appeal are:

- (i) The Corporate Debtor – Vatika Ltd. has been developing a project namely ‘Aspirations’ in village Harsaru, Sector 88B, Gurugram. The Corporate Debtor obtained registration certificate of the project issued by Haryana RERA on 23.12.2022 for total area admeasuring around 19.70 acres (12.212+7.50 acres).
- (ii) Allotment letters were executed between the Appellants and the Corporate Debtor on 17.10.2023. Appellant No.1 was allotted a Plot No.39 having area of 113.12 Sq. Yard. Agreement for sale was entered 17.10.2023. Similarly, other Appellants No.2 was allotted Plot No.38, Appellant No.3 was allotted Plot No.31 and Appellant No.4 was allotted Plot No.42. Appellants made payment to the Corporate Debtor, however, neither they were able to take possession nor Conveyance Deed executed.
- (iii) The Respondent No.1 filed an application under Section 7 being CP(IB) No. 45/Chd/Hry/2024 praying for initiation of CIRP against the Corporate Debtor on account of default committed.

- (iv) The Appellants filed an IA (I.B.C)/1537(CH)2025 under Section 65 of the I&B Code seeking direction that application filed under Section 7 by Respondent No.1 is hit by fraud and malafide intent for purposes other than resolution of insolvency of the Corporate Debtor and sought imposition of exemplary costs on Respondent No. 1 in the Application.
- (v) Reply was filed by Respondent No.1 as well as Respondent No.2.
- (vi) The Adjudicating Authority after hearing the parties by order dated 03.02.2026 has rejected the Section 65 application filed by the Appellants. Aggrieved by which order Company Appeal (AT) (Ins.) No.268 of 2026 has been filed.
- (vii) By order of the same date dated 03.02.2026, CP(IB) No. 45/Chd/Hry/2024 has been admitted by the Adjudicating Authority, challenging which order Company Appeal (AT) (Ins.) No.269 of 2026 has been filed by the Appellants.

2. We have heard Shri Sanjiv Sen, learned senior counsel and Shri Krishnendu Datta, learned senior counsel appearing for the Appellants. Shri Gopal Jain, learned senior counsel, Shri Nalin Kohli, learned senior counsel and Shri Abhijeet Sinha, learned senior counsel have appeared for Respondent No.1. We have also heard learned counsel for the Intervener.

3. Learned counsel for the Appellants in support of Company Appeal (AT) (Ins.) No.268 of 2026 submits that the default was created by the Financial Creditor itself by non-issuance of NOC due to which interest of the

homebuyers has been adversely prejudiced. Issuance of NOCs was a contractual obligation of the Financial Creditor as recorded in the Debenture Trust Deed dated 30.06.2017. Section 7 application filed by the Financial Creditor is in breach of the contractual obligations and the said obligation was reciprocal in nature, more particularly when the entire payments from the allottees were to be received in the escrow account, which is controlled by the Financial Creditor /its representative. The application filed by the Appellants satisfied grounds as required under Section 65. The Financial Creditor induced default for purpose other than resolution of the Corporate Debtor in non-issuance of NOC for sale in favour of the homebuyers.

4. Learned counsel for the Respondent No.1 refuting the submissions of learned counsel for the Appellant submits that application under Section 65 filed by the Appellants was itself misuse of process of Court. The Respondent No.1 has filed Section 7 application due to default committed by the Corporate Debtor in payment of dues of the Financial Creditor as per Debenture Trust Deed. Appellant has failed to establish any fraud or malicious intent as required under Section 65 application. The provision requires specific pleadings supported by strict and cogent proof and cannot be triggered on the basis of vague assertions or speculative allegations. Non-issuance of NOCs were in certain instances, such contractual or commercial issues does not amount to any fraud or malicious initiation. Section 7 petition was instituted by the Respondent No.1 in June, 2024 and pending for adjudication. Section 65 application was filed only in September, 2025 after lapse of 20 months at stage of final arguments in Section 7 application,

which indicate deliberate attempt to stall and derail the insolvency proceeding. The facts and circumstances of the case, strongly points towards coordination between the Appellants and the Corporate Debtor aimed at obstructing the lawful insolvency process. Appellants were well aware of the encumbrances and NOC framework. Section 7 application is bonafide and statutorily compliant. It is submitted that Company Appeal (AT) (Ins.) No.269 of 2026 challenging the order admitting Section 7 application also deserves to be dismissed, Respondent No.1 having able to debt and default on part of the Corporate Debtor.

5. We have considered the submissions of learned counsel for the parties and perused the record.

6. Section 65 of the I&B Code provides as follows:

“Section 65: Fraudulent or malicious initiation of proceedings. – (1) *If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.

[(3) If any person initiates the pre-packaged insolvency resolution process—

(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or

(b) with the intent to defraud any person,

the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.]”

7. Application filed under Section 65 by the Homebuyers has been held to be maintainable by the Adjudicating Authority in the impugned order, however, the Adjudicating Authority after considering the submissions of the parties came to the conclusion that ground pressed by the Appellants for non-issuance of NOC by Respondent No.1 does not furnish any ground for invoking jurisdiction under Section 65.

8. A copy of the application filed under Section 65 has been brought on the record by the Appellant at Annexure A-2. Appellants in the application claims allotment of different plots by the Corporate Debtor and also claim to be entered into Builder Buyer Agreement in the year 2023-2024. The pleading in the application is that although units were allotted but NOC was not issued by Respondent No.1 even though homebuyers have paid consideration. In Paras 28, 29 and 30 following has been pleaded:

“28. That Respondent No. 1 has failed to issue the necessary NoCs, which prevents the Respondent No.2 from executing the conveyance deeds and completing the sales.

29. That by withholding the NoCs, Respondent No. 1 is choking the developer's cash flow from the project's receivables while using the IBC as a coercive debt recovery tool rather than a mechanism for collective resolution whereas, the goal of the IBC is to resolve insolvency and maximize value for all stakeholders, not just one creditor.

30. The applicants, as homebuyers, are also financial creditors under the IBC. Respondent No. 1's actions are directly detrimental to the homebuyers, who have paid their money but are being denied possession of their plots with a malicious intent. By trying to push the company into insolvency, Respondent No. 1 is prioritizing its own debt recovery, by choking the Company at the expense of other financial creditors (the homebuyers), to extract homebuyers, which is contrary to the spirit of the IBC.”

9. The prayers made in the application are as follows:

“(i) That the Application u/s 7 of the Code filed by Respondent No. 1 hit by fraud and malafide intent for a purpose other than resolution in insolvency;

(ii) That exemplary costs as contemplated under Section 65 of the Code be imposed on Respondent No. 1;

(ii) *That any other order as may be deemed fit in the facts and circumstances of the case be passed.”*

10. When we look into the pleadings and allegations in the application neither there is any allegation nor pleading to satisfy the ingredients of Section 65 of malicious or fraudulent initiation of CIRP by Respondent No.1. With respect to allegations of non-issuance of NOC by Financial Creditor, the said submission has been considered and dealt with by the Adjudicating Authority in the impugned order. It is useful to notice Paras 15, 16, 17 and 18 of the order, which are as follows:

“15. Now a question which arises for our consideration is whether non issuance of NOC can render the Section 7 Petition as malicious and can it jeopardize the rights of the allottees in case the Petition is admitted and CIRP is commenced.

16. The main grievance of the allottees are that due to non-issuance of NOC by the Respondent no.1 they are not handed over the possession of the property and no conveyance deed is executed in furtherance.

*17. At this juncture, it is apposite to refer to the latest judgment dated 15.01.2026 of the Hon’ble Supreme Court of India in **Elegna Co-Op Housing and Commercial Society Ltd. v. Edelweiss Asset Reconstruction Company Ltd. and Anr. (2026) ibclaw.in 17 SC**, wherein the Hon’ble Supreme Court of India, while dealing with a similar contention relating to non-issuance of No Objection Certificate, has categorically held as under:*

“12. Question No. 1 – Admission of the Corporate Debtor into CIRP

*“12.1. The Corporate Debtor contends that the initiation of CIRP by the respondent – EARCL lacked bona fides and was intended to operate as a recovery mechanism rather than a resolution process. It is urged that the Corporate Debtor was a going concern; that the real estate project was substantially completed; and that adequate receivables from unsold inventory were available to service the debt. **The default, according to the Corporate Debtor, was not wilful but occurred due to EARCL’s refusal to issue provisional No Objection Certificate, which allegedly frustrated further sale of remaining units. Such conduct, it is contended, disentitles EARCL from invoking Section 7 of the Code.**”*

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“12.10. Any alleged non-cooperation by EARCL occurred subsequent to the default and cannot absolve the Corporate Debtor of its admitted failure to comply with its payment obligations. The NCLAT correctly held that considerations such as ongoing operations, partial project completion, or anticipated receivables are extraneous to the statutory mandate under Section 7.”

In view of the aforesaid, it is evident that any issue pertaining to non-issuance of NOC, arose subsequent to the occurrence of default. Such post default events cannot dilute, extinguish, or override the statutory consequences flowing from an admitted default. Accordingly, the plea raised regarding non issuance of NOC does not constitute a valid ground to obstruct or bar the proceedings initiated under Section 7 of the Insolvency and Bankruptcy Code, 2016.

18. Further, in our view the possession can be duly given to the allottees during the CIRP. At this juncture we refer to **Regulation 4E of CIRP Regulations 2016** which reads as under:

“4E. After obtaining the approval of the committee with not less than sixty-six percent of total votes, the resolution professional shall hand over the possession of the plot, apartment, or building or any instruments agreed to be transferred under the real estate project and facilitate registration, where the allottee has requested for the same and has performed his part under the agreement.”

11. When we look into the observations in Para 17, it is clear that issue pertaining to non-issuance of NOC had arisen subsequent to occurrence of default. The Adjudicating Authority after considering the relevant pleadings and submissions of the parties rightly came to the conclusion that Section 65 application filed by the Appellants deserve to be rejected.

12. The submission of the learned counsel for the Appellant that application has been dismissed as infructuous due to admission of Section 7 application also does not help the Appellant in the present proceedings. The Adjudicating Authority apart from making above observation has considered the application on merits. The Adjudicating Authority has held that in absence of any cogent material being brought on record to demonstrate that the Petition is filed with malicious and fraudulent intent, jurisdiction under Section 65 cannot be invoked. We, thus, are of the view that the Adjudicating Authority did not commit any error in rejecting Section 65 application filed by the Appellant being IA (I.B.C)/1537(CH)2025.

13. Now coming to the Company Appeal (AT) (Ins.) No.269 of 2026, which is an appeal filed by the Appellants challenging the order dated 03.02.2026 admitting Section 7 application being CP(IB) No. 45/Chd/Hry/2024 filed by the Respondent No.1. Appellants in their Appeal have prayed for setting aside the order admitting Section 7 application. An appeal being Company Appeal (AT) (Ins.) No.266 of 2026 has been filed by the Suspended Director of the Corporate Debtor challenging the same order dated 03.02.2026. We by separate order has decided the Company Appeal (AT) (Ins.) No.266 of 2026 disposing of the appeal with certain directions. Company Appeal (AT) (Ins.) No.269 of 2026 also deserves to be disposed of in terms of the order of the date passed in Company Appeal (AT) (Ins.) No.266 of 2026.

14. In result, Company Appeal (AT) (Ins.) No.268 of 2026 is dismissed and Company Appeal (AT) (Ins.) No.269 of 2026 is disposed of as above.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

27th March, 2026

Archana