

ITEM NO.19

COURT NO.7

SECTION XVII-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).3811/2023

AVJ HEIGHTSS APARTMENT OWNERS ASSOCIATION

Appellant(s)

VERSUS

IIFL FINANCE LIMITED & ANR.

Respondent(s)

FOR ADMISSION and IA No.105737/2023-STAY APPLICATION and IA
No.105738/2023-EXEMPTION FROM FILING O.T.
IA No. 105738/2023 - EXEMPTION FROM FILING O.T.
IA No. 105737/2023 - STAY APPLICATION

WITH

Diary No(s). 6520/2023 (XVII-B)

IA

FOR PERMISSION TO FILE APPEAL ON IA 122544/2023

FOR CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS ON IA
122545/2023FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA
122547/2023FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
122548/2023

FOR STAY APPLICATION ON IA 122549/2023

IA No. 122545/2023 - CONDONATION OF DELAY IN REFILEING / CURING THE
DEFECTSIA No. 122548/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENTIA No. 122547/2023 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES

IA No. 122544/2023 - PERMISSION TO FILE APPEAL

IA No. 122549/2023 - STAY APPLICATION

Date : 16-04-2026 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Appellant(s) : Ms. Udita Singh, AOR
Mr. Shashank Agarwal, Adv.

Mr. Zeeshan Diwan, AOR
Mr. Harsha, Adv.

For Respondent(s) : M/S. Dua Associates, AOR
Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Nakul Dewan, Sr. Adv.
Mr. Nikhil Mehndiratta, Adv.
Mr. Toyesh Tewari, Adv.
Mr. Agastya Sen, Adv.
Ms. Nidhisha Chokshi, Adv.
Ms. Danya Krishnan, Adv.
Ms. Dhanya Krishnan, Adv.

Ms. Mani Gupta, Adv. (through VC)

UPON hearing the counsel the Court made the following
O R D E R

1. Delay condoned.
2. I.A. No.122544/2023 i.e., application for permission to file appeal is granted.
3. There are two appeals before us today.
4. One appeal is at the instance of the AVJ Heightss Apartment Owners Association and the connected appeal is at the instance of one of the suspended Directors of the corporate debtor.
5. Both the appeals arise from the common judgment and order dated 02.01.2023 passed by the National Company Law Appellate Tribunal in Company Appeal No.626/2021 wherein the Appellate Tribunal dismissed the appeal preferred by the AVJ Heightss Apartment Owners Association against order dated 20.05.2021 passed by the NCLT in I.A. No.1261/2020 in CP (IB) No.654 (PB)/2019 titled, "M/s. Vishal Fabrics & Ors. vs. M/s. AVJ Developers (India) Private Limited", holding that the claim of IIFL be considered by the Resolution Professional undertaking the CIRP of AVJ Developers (India) Private Limited.
6. We heard Mr. Shashank Agarwal, the learned counsel appearing

for AVJ Heightss Apartment Owners Association and Mr. Zeeshan Diwan, the learned counsel appearing for India Infoline Finance Limited (claimant). We also heard Ms. Mani Gupta, the learned counsel appearing for the Resolution Professional.

7. It appears from the materials on record that the claim of IIFL came to be rejected by the Resolution Professional on 24.01.2020 as the RP was unable to verify the claim against the corporate debtor from the records of the corporate debtor.

8. IIFL, being dissatisfied with the rejection of the claim went before the NCLT. The NCLT allowed the claim. As against the order passed by the NCLT, the matter went before the NCLAT. The NCLAT dismissed the appeal and thereby affirmed the order passed by the NCLT.

9. What we have been able to gather from today's hearing, more particularly, from the submissions canvassed on behalf of the appellants before us that the entire claim put forward by IIFL is sham and bogus. Manifold contentions were raised in this regard. However, what has been brought to our notice is something very important.

10. Both the learned counsel appearing for the appellants and the learned counsel appearing for the RP brought to our notice arbitral award passed by the Arbitral Tribunal dated 03.07.2024. These arbitration proceedings were initiated at the instance of the IIFL insofar as their claim of Rs.85,00,00,000/- (Rupees Eighty Five Crore only) with interest is concerned.

11. We would like to record few findings recorded by the Arbitral Tribunal in its award. The same reads thus:-

"xxx

7(vii) The loan in sum of INR 85,00,00,000.00 has been disbursed as per the records of the Claimant, as already noted hereinabove on 30.09.2017, by distributing it in the sums of INR 18,38,85,621.00, INR 56,83,34,016.00 and INR 9,77,80,360.00 and crediting said sums in CL-151, CL-152 and CL-252 in the name of M/s AVJ Developers (India) Pvt. Ltd. As per the sanction letter **C-5**, the loan has to be disbursed in CL-288. The Claimant has not filed any ledger pertaining to CL-288. **R-33** dated 04.10.2017, admittedly signed by Rahul Doshi the witness of the Claimant, who admitted having signed the same in response to question No. 64, during cross-examination, instructs HDFC Bank branch at Peninsula Business Park, Senapati Bapat Marg, Lower Parel, Mumbai as under:

This is with reference to our telephonic conversation, we request you to transfer Rs. 85,00,00,000/- (Rupees Eighty Five Crore only) from AVJ Developers (India) Pvt. Limited Escrow Account No. 01930350000089 to INDIA INFOLINE FINANCE LIMITED in the following bank details mentioned below:

Name	INDIA INFOLINE FINANCE LIMITED
Account No.	00600340079319
Amount	Rs. 85,00,00,000/- (Rupees Eighty Five Crore only)
Type	Current Account
Bank & Branch	HDFC Bank
IFSC Code	HDFC0000060

xxx

7(xii) Seven documents, **C-6, C-7, C-8, C-9, C-10, C-11, C12**, all bearing the date 01.11.2017 which have been relied upon by the Claimant in support of the loan having been sanctioned under the sanction letter **C-5** dated 28.09.2017; the taint in which has already been highlighted by the Tribunal in para 7(v) above, with further taint in paras 7(vi) to 7(xi) above. A brief description of the seven documents is as under:

a) **C-6** Credit Facility Agreement dated 01.11.2017 bearing the signature of Vinay Jain, the stamp paper whereof was purchased on 25.09.2017 and records that it was purchased by Vinay Jain.

b) **C-7** Deed of Guarantee dated 01.11.2017 by M/s. Best

View Properties Ltd. and M/s AVJ Developers (India) Pvt. Ltd. On each page of the Deed of Guarantee signatures of Vinay Jain are appended with a seal of M/s. Best View Properties Ltd. and M/s AVJ Developers (India) Pvt. Ltd. but at the place where on the printed proforma of the Deed of Guarantee: BORROWER (SIGN & STAMP) is printed.

c) **C-8** Board resolution dated 01.11.2017 of the Board of Directors of M/s. Best View Properties Ltd. which bears the signatures of Vinay Jain and the stamp of M/s. Best View Properties Ltd. is affixed.

d) **C-9** Memorandum recording creation of mortgage by M/s. Best View Properties Ltd. bearing the signatures of Vinay Jain with the stamp of M/s. Best View Properties Ltd. affixed.

e) **C-10** Deed of Declaration-cum-confirmation on a stamp paper purchased on 25.09.2017 recording that it was purchased by Vinay Jain, bearing the signatures of Vinay Jain with stamp of M/s. Best View Properties Ltd. affixed.

f) **C-11** Memorandum recording creation of mortgage by M/s AVJ Developers (India) Pvt. Ltd. bearing the signatures of Vinay Jain with the stamp of M/s AVJ Developers (India) Pvt. Ltd. affixed.

g) **C-12** Deed of Declaration-cum-confirmation on a stamp paper purchased on 25.09.2017 recording that it was purchased by Vinay Jain, bearing the signatures of Vinay Jain with stamp of M/s AVJ Developers (India) Pvt. Ltd. affixed.

7(xiii) Since Vinay Jain was released from judicial custody on 24.10.2017, he was free to move about and was in a position to execute the aforesaid six documents, but could not have purchased the stamp papers on 25.09.2017 on which the deed of declaration-cum-confirmation **C-10 & C-12** were drawn up. The witness of the Claimant Rahul Doshi answer question No.36 during cross examination as under:

Q.136 Can you tell who purchased the stamp paper on which Annexure C-6 was scribed?

Ans. As recorded, the stamp paper was purchased by Mr. Vinay Jain.

Vinay Jain being in judicial custody on 25.09.2017 could not have purchased the stamp paper on 25.09.2017. Further, Vinay Jain has denied his signatures on all these documents. In his affidavits by way of examination-in-chief in the two arbitration proceedings, Mr. Rahul Doshi has deposed that after Vinay Jain was released from custody on 24.10.2017 he executed the above seven

documents and couriered the same to the Mumbai office of the Claimant. But, the answers by the witness to the aforementioned questions 94 to 97 and 136 show that the requirement under the email **R-29** dated 04.10.2017 sent at 11:28 AM was to disburse INR 85,00,00,000.00 once the documents were received, which documents the witness avoided to adumbrate evidenced by his answer to question No. 95, but admitted that they would at-least be the signed loan agreement and the draw down request. The loan agreement referred to by the witness is **C-6**, because the Claimant has not relied on any document labelled as a loan agreement. It has relied upon the credit facility agreement **C-6** which bears the label **SME Loan Agreement**. Thus, the witness of the Claimant having admitted that **C-6** was with the Claimant before the loan was disbursed, and the draw down request being made on 04.10.2017 would require it to be held that the document **C-6** has been put a date randomly by the Claimant. In any case, it being the positive case of the witness of the Claimant that it was only after **C-6** was received that the loan was disbursed, it has to be held that the case of the Claimant is that at least **C-6** was available with it on 04.10.2017. This taints all the documents bearing the date 01.11.2017. There is an additional reason as to why the said compendium of documents bearing the date 01.11.2017 are tainted. **R-41**, being the closure report dated 08.05.2022 submitted by the Investigating Officer EOW Delhi in FIR 143/2019 at Sr. No. 3 records that the Claimant had handed over to him a board resolution dated 01.11.2017 signed and executed by Vipin Aggarwal, being the board resolution passed by the Board of Directors of M/s AVJ Developers (India) Pvt. Ltd. The closure report records that this document was handed over to him on 14.08.2020 by Mr. Vishal Goel, the Asstt. Vice President of the Claimant. The document may not be on the record of the Tribunal, but the reference to the same is in **R-41**. Rahul Doshi has been cross-examined regarding FIR No. 143/2019. His answers to question No. 79 to 86, being relevant, are noted. They read as under:

Q79. Are you aware of the complaint filed by Mr. Vinay Jain based whereon FIR No.143 of 2019, EOW Delhi was registered?

Ans. Mr. Vinay Jain had lodged a complaint with EOW Cell, Delhi based whereon an FIR was registered but whether it was FIR No.143 of 2019 I cannot tell.

Q80. Are you aware of the notices issued by the Investigating Officer, EOW, Delhi to the Claimant in

connection with the investigation? Ans. I do not recollect. (Per Tribunal: Did any Police Officer from EOW, Delhi contact you and recorded your statement?)

Ans. Yes.

Q81. I put it to you that you are aware that the Claimant was issued notices U/s 91/160 Cr. P.C. with a direction that a Senior Officer of the Claimant should appear before the Investigating Officer and you assisted in the response filed to the said notices.

Ans. May be.

Q82. Did you assist in preparing a response to the notice dated 18.09.2020?

Ans. I do not recollect whether I was required to assist to file a response to the notice Mark-A. Q83. Do you know Vishal Goel?

Ans. Yes.

Q84. Have you seen him sign and write?

Ans. No.

Q85. So, you would not be in a position to recognize his signature or initials? Ans. I would not be in a position to recognize. (Per Tribunal: Are you aware that in the complaint lodged by Mr. Vinay Jain to the EOW, Delhi you have been named an accused?)

Ans. Yes.

Q86. What is the designation of Mr. Vishal Goel? 51 xс

Ans. I do not know.

xxx

7(xvii) **C-13, C-14 and C-15**, being the ledger accounts of the loans CL-151, CL-152 and CL-252 availed of by M/s AVJ Developers (India) Pvt. Ltd. show that the three accounts were liable to be declared NPAs as per RBI guidelines which require that within 90 days of the date of default, the account has to be declared NPA and reported to RBI. The Tribunal must fairly record that the loan agreements pertaining to CL-151, CL-152 and CL-252 are not on record of the Tribunal. Thus, the terms of the repayment of the loan are not known to the Tribunal. But, **C-13, C-14 and C-15** show a strange stratagem adopted by the Claimant to circumvent the RBI guidelines. Amounts have been credited as: **BEING TDS AMOUNT CREDITED**. How could the amounts recorded against said entries under the head **BEING TDS AMOUNT CREDITED**, be credited in the loan account of M/s AVJ Developers (India) Pvt. Ltd. remains a mystery! One can understand an account where money is lying credited and the governing agreement between the parties requires

interest to be paid on the amount lying in credit; for example a bank account. In such case, interest would be credited to the account of the account holder who would be a beneficiary of a positive balance in the account. TDS would be deducted from said interest credited. But in a loan account, where at the time of disbursal of the loan and the account opened, the account starts with a debit entry, the question of any TDS being deducted does not arise. The falsification of the account in the manner in which it is recorded is obviously to pull wool over the eyes of RBI.

7(xviii) It is obvious that when the Claimant could not continue with the stratagem adopted by it regarding the manner in which the loan accounts for CL-151, CL-152 and CL-252 were maintained, it resorted to another stratagem of creating documents to show that Vinay Jain took a loan of INR 85,00,00,000.00 and made a request to disburse the loan amount in the loan accounts of M/s AVJ Developers (India) Pvt. Ltd., thereby reducing the loan amounts in CL-151, CL-152 and CL-252 and in said manner ever-green the said accounts and germinate another account in the name of Vinay Jain."

12. Mr. Nakul Dewan, the learned senior counsel informed us that the arbitral award is now a subject matter of challenge before the Delhi High Court under Section 34 of the Arbitration Act.

13. We take a very serious note of the matter that the plan as approved by the CoC is awaiting approval of the adjudicating authority past almost two years.

14. The CoC approved the plan on 04.07.2024. The application seeking approval was filed on 12.07.2024 before the NCLT Principal Bench, New Delhi.

15. It is very unfortunate that there is no adjudication on the approval past approximately two years.

16. It has come to our notice that many such approval applications are pending with the NCLT Principal Bench, New Delhi and also other

Benches past several years.

17. We want the NCLT Principal Bench, New Delhi to provide us with the following information at the earliest:-

(i) How many applications for approval of resolution plans are pending?

(ii) For how long are such applications pending?

(iii) Reasons, why the approval applications have not been adjudicated upon till date.

18. We also request the learned counsel appearing for the parties to provide us with the necessary information as regards the aforesaid questions.

19. We request the Registrar, NCLT Principal Bench, New Delhi to forward the report as regards the queries raised by us.

20. We also implead IBBI (Insolvency and Bankruptcy Board of India) as party respondent in both the appeals.

21. The cause title be amended accordingly.

22. Let notice be issued to IBBI also. Dasti permitted.

23. We direct the IBBI to provide us with the necessary figures and statistics across the country, for the queries set out above.

24. Let necessary reports come on record within a period of two weeks from today.

25. We request Mr. Gopal Jain and Mr. Navin Pahwa, the learned senior counsel to assist us as Amicus.

26. After examining the statistics, we will decide as to what further course of action, if any, is to be adopted.

27. Post the matters on 29.04.2026 at 02:00 P.M.. To be treated as part-heard.

**(HARPREET KAUR)
COURT MASTER (SH)**

**(POOJA SHARMA)
COURT MASTER (NSH)**