

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

**Company Appeal (AT) (Insolvency) No.1529 of 2022**

[Arising out of order dated 30.11.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in I.A. No. 3640/2022 in CP (IB) No. 923(PB)/2018]

**IN THE MATTER OF:**

**SP Propbuild LLP**

Having its registered office at:  
E-365, Nirman Vihar, Main Vikas Marg,  
East Delhi, Delhi – 110092.

**...Appellant**

**Vs.**

**Rabindra Kumar Mintri**

**Resolution Professional of Today Homes Noida Pvt. Ltd.**

Having its office at JD-18-B,  
Near Ashiana Chowk,  
Pitampura, New Delhi - 110034.

**One Group**

Consortium of Mr. Sunil Kr. Jain and Mr. Apoorv Jain,  
Residing at C-479, Defence Colony,  
New Delhi – 110024  
Successful Resolution Applicant of  
Today Homes Noida Pvt. Ltd.

**...Respondents**

**Present:**

**For Appellant: Mr. Arun Kathpalia, Sr. Advocate with Mr. Anirban Bhattacharya, Mr. Rajeev Chowdhary, Mr. Manav Goyal, Ms. Niharika Gupta, Mr. Muneeb Rasheed Malik and Mr. Atul Sharma, Advocates.**

**For Respondents: Mr. Apoorv Agarwal and Ms. Riya Thomas, Advocates for Respondent No.1.**

**Mr. Abhijit Sinha, Mr. Adhish Sharma, Mr. Nitin Pandey and Mr. Akash Chatterjee, Advocates for Respondent No.2.**

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

### **ASHOK BHUSHAN, J.**

This Appeal has been filed by the Appellant challenging the order dated 30.11.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi rejecting I.A. No. 3640 of 2022 in C.P. (IB) No.923 (PB)/2018. Brief facts of the case necessary to be noticed for deciding this Appeal are:

- i. By order dated 20.08.2019, M/s Today Homes Noida Pvt. Ltd, the Corporate Debtor was admitted under insolvency. Publication was made by the IRP on 25.08.2019 inviting claims from the creditors/stakeholders. Last date for submission of claims, as per Form A was 03.09.2019.
- ii. On 04.03.2020, in the 6<sup>th</sup> meeting of the CoC, the Resolution Plan submitted by consortium of “One Group” was approved. The Resolution Professional filed an I.A. No. 2518 of 2021 under Section 30(6) for approval of the Resolution Plan.
- iii. On 16.06.2021, the Appellant filed its claim in Form CA. The Resolution Professional rejected the claim on 24.03.2021 on the ground that same was time barred and the Resolution Plan has already been approved on 03.03.2021.

- iv. Appellant filed an I.A. No. 3213 of 2021 challenging the rejection of its claim, which application was rejected by the Adjudicating Authority vide order dated 21.09.2021. The Appellant filed an appeal, which too was dismissed by the Appellate Tribunal vide order dated 10.11.2021. The order dated 10.11.2021 passed by this Appellate Tribunal was challenged by the Appellant before the Hon'ble Supreme Court. The Hon'ble Supreme Court vide its judgment and order dated 12.01.2022 dismissed the Civil Appeal filed by the Appellant.
- v. On the strength of judgment of this Tribunal dated 01.06.2022 delivered in **"Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors., Company Appeal (AT) (Ins.) No.390 of 2022"** another I.A. No. 3640 of 2022 was filed by the Appellant praying for various directions. The said application has been dismissed by the Adjudicating Authority by impugned order dated 30.11.2022, challenging which order this appeal has been filed.

2. We have heard Shri Arun Kathpalia, learned senior counsel for the Appellant. Shri Apoorv Agarwal, learned counsel for the Resolution Professional and Shri Abhijeet Sinha, learned counsel for the Respondent No.2, Successful Resolution Applicant.

3. Shri Arun Kathpalia, learned counsel for the Appellant submits that the Adjudicating Authority failed to appreciate that the Appellant was entitled to benefit of judgment passed by this Tribunal in **"Puneet Kaur vs. K.V.**

**Developers Pvt. Ltd. & Ors.”**. The judgment of **“Puneet Kaur”** has to be applied retrospectively and the said decision has to be regarded as the law as existed on 21.09.2021 when the earlier application of the Appellant was rejected. The Resolution Professional has admitted that the Appellant has possession of 9 flats in the project of the Corporate Debtor. The Resolution Professional being aware of the factual position vis-à-vis the 50 flats purchased by the Appellant, the Resolution Professional did not disclose correct facts in the Information Memorandum. In the Resolution Plan only 4 units out of 9 units have been incorporated. The claim of the Appellant cannot said to have been extinguished since the Resolution Plan has not been approved by the Adjudicating Authority. In the Resolution Plan, the Successful Resolution Applicant treats the claimants and non-claimants financial creditors differently, which is not permissible. Appellant is not a speculative investor. The principal of *res judicata* shall not be applicable since the issue with respect to maintainability of the claim of the Appellant was never decided on merits.

4. Learned counsel for the Resolution Professional refuting the submission of learned counsel for the Appellant contents that the Appellant’s earlier application being I.A. No. 3213 of 2021 having been rejected, it was not open for the Appellant to file another I.A. which prays for almost same reliefs. In the Information Memorandum, it was noticed that the Appellant have booked 50 units. Respondent No.1 having accepted the allotment of 9 units as valid, Respondent No.1 shall undertake the registration of 9 units, which are already in possession of the Appellant, if the Appellant complies

with the terms and conditions of the Resolution Plan submitted by Respondent No.2.

5. Learned counsel appearing for the Successful Resolution Applicant contends that application filed by the Appellant being I.A. No. 3640 of 2022 has rightly been rejected by the Adjudicating Authority. Issue pertaining to belated claim filed by individual homebuyers as well as the Appellant has already been settled by this Appellate Tribunal as well as the Hon'ble Supreme Court in this very CIRP of the Corporate Debtor, which question cannot be allowed to be reopened. The judgment of this Tribunal in "**Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors.**" has no bearing in the present case. Appellant is not a genuine homebuyer. The Appeal is barred in terms of the doctrine of *res judicata*. The Appellant cannot be permitted to reagitate the same issue by taking advantage of change in law by subsequent judgment of this Tribunal. It is further submitted that the Resolution Plan Clause 18.15 has referred to the claim of the Appellant of booking of 50 units. The claim of the Appellant having been taken note in the proceeding and being dealt in the Resolution Plan no benefit can be claimed by the Appellant by the judgment of this Tribunal in "**Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors.**".

6. Learned counsel for the parties have placed reliance on judgment of this Tribunal and the Hon'ble Supreme Court which shall be referred to while considering the submissions of respective parties. Before we enter into respective submissions of learned counsel for the parties, it is necessary to

notice series of litigation which was undertaken in the very CIRP of the Corporate Debtor.

7. The CIRP of the Corporate Debtor commenced by order dated 20.08.2019. Last date for submission of claim as per Form A was 03.09.2019. It was on 16.06.2020, when the claim was filed by the Appellant in Form CA which was rejected by the Resolution Professional on 24.03.2021. I.A. No. 3213 of 2021 was filed by the Appellant, where following reliefs were claimed:

- “(a) allow the instant application of the Applicant;*
- (b) condone the delay of the Applicant in presenting the claim before the RP;*
- (c) issue necessary directions to the RP to consider the claim of the Applicant;*
- (d) direct the RP to admit the claim of the Applicant and to handover the possession of the 41 flats as mentioned in paragraph 7 of this application, and effect the transfer thereof in the name of the Applicant by executing the conveyance; and*
- (e) in the meanwhile, direct the RP not to proceed with the adoption of Resolution Plan (not been approved till today and the approval of which would render the present application infructuous), without the admission of the claim of the Applicant as the claim was duly presented before the RP at an appropriate stage which warranted admission as per the settled law.”*

8. The Adjudicating Authority rejected the I.A No. 3213 of 2021 vide its order dated 21.09.2021. Against the order of the Adjudicating Authority an appeal was filed before this Tribunal, which was dismissed on 10.11.2021, against which order Appellant filed an appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court noticed the fact that although Resolution Plan was approved on 04.03.2020 whereas the Appellant filed its claim on 16.06.2020. Civil Appeal No. 7907 of 2021 was dismissed by the Hon'ble Supreme Court by judgment and order dated 12.01.2022, which is to the following effect:

**“O R D E R**

*The Committee of Creditors has approved the Resolution Plan on 4<sup>th</sup> March, 2020 whereas the appellant filed a claim on 16<sup>th</sup> June, 2020 which was rejected by the Resolution Professional on 19<sup>th</sup> April, 2021. The adjudicating authority dismissed the application filed by the appellant which was upheld by the appellate tribunal. Aggrieved by which this appeal has been filed.*

*Mr. Mukul Rohatgi, learned senior counsel submitted that as per section 31 of the IPC, the Resolution Plan becomes final only after it is approved by the adjudicating authority. He relied upon the judgment of this Court in the case of Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd. Reported in (2021) 9 sec 657. After examining the said judgment and after hearing Mr. Mukul Rohatgi, learned senior counsel, we are not*

*inclined to interfere with the order passed by the Tribunal.*

*The appeal is dismissed.”*

9. A judgment was delivered by this Appellant Tribunal in **“Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors.”** on 01.06.2022 where this Tribunal held that liability towards homebuyers who have not filed their claim exists and required to be included in Information Memorandum. Certain directions were issued by this Tribunal in said case directing the Resolution Professional to provide all details of homebuyers alongwith their claims as reflected from the record of the Corporate Debtor, who had not filed their claims. The Resolution Applicant was required to prepare an addendum, which was to be placed before the CoC. An I.A. No. 3640 of 2022 was filed by the Appellant relying on the judgment of this Tribunal in **“Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors.”**. In the said I.A. following reliefs were claimed by the Appellant:

- “i. Allow the instant Application;*
- ii. Direct Respondent No. 1 to admit the claim in light of the fresh facts and circumstances; and;*
- iii. Direct the Respondent No.2 to consider the claims of the Applicant as the part of Resolution Plan; and;*
- iv. Direct Respondent No. 1 to execute registration of conveyance deeds for the (nine) 9 flats whose possession had been handed over to the Applicant;*



*v. Pass any other orders as this Hon'ble Adjudicating Authority may deem fit and proper in view of the facts and circumstances of the present case."*

10. The I.A. No. 3640 of 2022 has been rejected by the Adjudicating Authority after noticing sequence of events and series of litigation. In Para 16 and 17 of the impugned order following observations have been made by the Adjudicating Authority:

*"16. Here, the applicant has sought recall of the order on the ground of change of law. But we are of the view that it will never be a ground to recall the order passed by the Adjudicating Authority and in case the Adjudicating Authority, if it exercises such power to recall the order based on subsequent judgment overruling the earlier judgment, it would not only amount to setting aside the earlier order as if it is an appeal but also setting aside the judgment passed by the Hon'ble Appellate Tribunal and Hon'ble Supreme Court, which is impermissible in law.*

*17. It is trite law that once the proceedings are concluded in appeal before the Hon'ble Apex Court, the same cannot be reopened and recalled on the ground of subsequent judgment which overruled the earlier judgment."*

11. When we look into the prayers made in I.A. No 3640 of 2022, it is clear that the substantial prayer in the application is admission of the claim of the Appellant and to consider the said claim in the Resolution Plan. When

we look into the prayers which were made by the Appellant in I.A. No. 3213 of 2021, the main prayer in the said application was also direction to the Resolution Professional to consider the claim of the Appellant to admit the claim.

12. As noted above, the I.A. No. 3213 of 2021 was rejected by the Adjudicating Authority, by this Tribunal as well as by the Hon'ble Supreme Court, which was passed on the Appeal filed by the Appellant, which has already been extracted by us. The decision of the Adjudicating Authority refusing to admit the claim of the Appellant was upheld upto the Hon'ble Supreme Court which issue cannot be allowed to be reagitated by the Appellant in the same CIRP by means of another I.A. being I.A. No. 3640 of 2022. The principle of *res judicata* applies to the same proceeding also, it is a settled law.

13. We may refer to the judgment of Hon'ble Supreme Court in **“(2005) 1 SCC 787, Bhanu Kumar Jain vs. Archana Kumar & Ors.”**, where Hon'ble Supreme Court has reiterated that principles of *res judicata* apply in different stages of same proceeding. In Para 18 and 19 following has been held:

*“18. It is now well-settled that principles of res judicata apply in different stages of the same proceedings. (See Satyadhyan Ghosal v. Deorajin Debi and Prahlad Singh v. Col. Sukhdev Singh).*

19. *In Y.B. Patil it was held:*

*“4. It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent state of that proceeding...”*

14. Hon’ble Supreme Court further held that the res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties. In Para 30 following has been laid down:

*“30. Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue estoppel is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. The doctrine of res judicata creates a different kind of estoppel viz. estoppel by accord.*

15. A three Member Bench of this Appellate Tribunal had also occasion to consider the question as to whether a decision which has also been final between the parties can be retrospective on the strength of overruling of an earlier judgment. The three Member Bench of this Tribunal in **“Raghavendra G. Kundangar & Ors. vs. Shashi Agarwal & Anr., Company Appeal (AT) (Ins.) No. 886 of 2022”** laid down following in Para 21 and 22:

*“21. Once the order of the Adjudicating Authority attains finality on account of affirmation by the Hon’ble Apex Court in appeal, the same cannot be reopened. But the simple reason that the Appellants did not raise*

such issue and consequently, it is hit by the doctrine of constructive resjudicata, though the principle of resjudicata is a part of CPC, the doctrine is applicable to the proceedings in IBC. The Hon'ble Apex Court in the matter of **“Ebix Singapore Pte Ltd. Vs. Committee of Creditors of Educomp,”** <sup>11</sup> held in paragraph-62 of the judgment, the Hon'ble Apex Court dealt with the doctrine of resjudicata, concluded that the principle of resjudicata is applicable in IBC also.

22. It is undoubtedly true that once the proceedings are concluded in appeal before the Hon'ble Apex Court, the same cannot be reopened and recalled on the ground passed on subsequent judgment which overruled the earlier judgment.

34. **“The Apex Court in *Edukanti Kistamma (Dead) Through LRs Vs. Venkatareddy (Dead) Through LRs* referred supra**

...

“34. This judgment and order of the High Court also attained finality as it was not challenged by the respondents any further. Thus, in our view, the question of reconsideration of the validity of the tenancy certificate under Section 38-E(2) so far as Appellants 1 and 3 are concerned, could not arise in any subsequent proceedings whatsoever. More so, the entitlement of the said Appellants 1 and 3 to claim restoration of possession also cannot be reopened/questioned., as their entitlement to that effect had attained finality as the judgment and order of the High Court dated 28-4-2000, wherein their right to claim restoration of possession had been upheld, was not

*challenged by the respondents any further.*

..

*38. In view of the above factual matrix, we are of the considered opinion that it was not permissible for the High Court to reopen the issue either of grant or issuance of tenancy certificate under Section 38-E(2) or deal with the issue of restoration of possession so far as Appellants 1 and 3 are concerned. At the most, the High Court could proceed in the case of Appellant 2.*

*39. Admittedly, Smt. Ayesha Begum, the original landholder, had 127 acres of land. The claim of the appellants was valid and maintainable in view of the provisions of Section 37-A of the 1950 Act. The High Court was not justified in observing that as the issue of restoration of possession remained pending before the authority for about nineteen years, the respondents were justified in getting adjudication of their rights regarding issuance of certificate as it had not reached the finality. Mere pendency of proceedings before the court/tribunal cannot defeat the rights of a party, which had already been determined. The High Court ought to have appreciated that proceedings were only in respect of execution of the orders which had already been passed. Thus, proceedings were for the consequential relief. The issue of restoration of possession is to be decided under Section 32 of the 1950 Act. Question of application of the provision of Section 35 ought to have been raised in the first round of litigation. Such an issue is required to be agitated at the very initial stage of the proceedings and not in execution proceedings. The said issue in respect of Appellants 1 and 3 had already attained finality. More so, if in the tenancy registers of the relevant*

*years, the High Court could not have opened the issues of factual controversies at all.*

*35. In addition to the above judgment of Hon'ble Supreme Court, in the recent judgment in Civil Appeal No. 4840 of 2021 dated 17.08.2021 in the matter of "Neelama Srivastava Vs. State of UP and Ors."<sup>12</sup> held that when the judgment attained finality, it cannot be re-agitated in any collateral or incidental proceeding. In "Rudra Kumar Sain and Ors. Vs. Union of India and Ors."<sup>13</sup> while dealing with identical issue, the Hon'ble Supreme Court held that reconsideration of the judgment of the Court which has attained finality is not normally permissible. The decision upon the question of law rendered by this Court was conclusive and would bind the Court in subsequent cases. The Court cannot sit in appeal against its own judgment.*

*36. In the matter of "Union of India Vs. Maj. S.P. Sharma", the Hon'ble Apex Court held a decision rendered by the Competent Court cannot be challenged in a collateral proceeding for the reason that it is not permissible to do so as and when chooses and the finality of the proceeding would seize to have any meaning.*

*37. Applying the principle laid in the above judgment to the present facts, to give quietus to the dispute and to avoid abuse of the*

*process of Court to challenge the judgment which attained finality in a collateral or incidental proceeding, the appellants must be non-suited.*

*38. In view of the principle laid down in the above judgements, the principle of resjudicata, though a part of CPC, it would be applicable to the proceeding of this Tribunal and IBC. Only to prevent the abuse of process of law and give a finality to any proceeding, or orders, and to avoid an endless litigation to frustrate the very object of enacting IBC, the claim of appellants is liable to be rejected.”*

16. We, thus, are of the view that substantial prayer in I.A. No. 3640 of 2022 made by the Appellant to admit the claim of the Appellant having been finally rejected upto the Hon’ble Supreme Court, could not have been entertained and deserve to be rejected.

17. Now coming to the reliance of the Appellant on the judgment of this Tribunal in **“Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors.” (Supra)**, this Tribunal in the said judgment delivered on 01.06.2022 laid down following in Para 21 and 23:

*“21. When the allotment letters have been issued to the Homebuyers, payments have been received, there are Homebuyers and there is obligation on the part of real estate Company to provide possession of the houses along with other attached liabilities. The liability*

*towards those Homebuyers, who have not filed their claim exists and required to be included in the Information Memorandum. Further, under Regulation 36, sub-regulation 2(l), there is column for other information, which the Resolution Professional deems relevant to the Committee. The liabilities which have been undertaken by the Corporate Debtor, huge money received by the Corporate Debtor from Homebuyers, whose claims, which could not be filed within time, could not be wished away by the Resolution Professional, on the convenient ground that claims have not been filed by such Homebuyers. The purpose of CIRP of Corporate Debtor is to find out all liabilities of the Corporate Debtor and take steps towards resolution. Unless all liabilities of the Corporate Debtor are not known or included in the Information Memorandum, the occasion to complete the CIRP shall not arise.*

*23. We thus are of the considered opinion that Information Memorandum ought to have included the claim of those Homebuyers, who have not even filed their claims to correct liabilities of the Corporate Debtor for its appropriate resolution. In the present case, in the reply filed by Resolution Professional in paragraph 11, following statement has been made:*

*“11. It is pertinent to mention herein that the claims towards the Homebuyer/ Allottees including the Appellant herein have already been dealt with in the Resolution Plan as submitted by Respondent No.4. it is stated that despite the same, the Appellant is abusing the process of this Hon’ble Appellate Authority by filing the captioned Appeal for*



*seeking reliefs against the Respondents on frivolous grounds.”*”

18. The present is a case where although Appellant has not filed any claim but the booking amount of the 50 flats as is claimed by the Appellant is reflected in the Resolution Plan itself which indicate that the said was part of the Information Memorandum. Learned counsel for the Successful Resolution Applicant has relied on Para 18.15 of the Resolution Plan where the booking of 50 units by the Appellant has been noticed. Para 18.15 of the Resolution Plan is extracted as follows:

**“18.15 Contingent liability**

*“ii. According to the Information Memorandum two Allottees, SP Propbuild LLP and Jagmohan have booked 50 units and 16 units respectively at a very low price of around INR 1915 per square feet of Super Area. Other bookings in the project are done at an average rate of around INR 4000 per square feet of super area. These transactions seem to be undervalued transactions, and have a big financial impact on the Resolution Plan. The claims of these Allottees have not been received by the Resolution Professional till the date of submission of this Resolution Plan to the COC. In the event claims of these Allottees are received before the Plain Effective Date, a maximum of 50% of Principal Amount received from these Allottees would be refunded by the Corporate Debtor in quarter 12 subject to condition 18.4 (LOI) unless they are declared void by Hon'ble NCLT Bench. These units shall be available to the Corporate Debtor for sale from the Plan*

*Effective Date, free of any and all claims by these Allottees.”*”

19. We may further notice that the plan also deals with the claims of those allottees who have not filed any claim before the Resolution Professional. Para 18.4 (xiii) is as follows:

*“18.4 (xiii). Allottee or decree holder of the Corporate Debtor, who has not filed their claim with the Resolution Professional, or if filed, has not been verified by the Resolution Professional, or if verified, has not been informed to the Resolution Applicant prior to submission of this plan, till the completion of project, shall be dealt at the sole discretion of the Resolution Applicant according to the merits of the case, by way of proper verification of the documents held by the Allottees. Upon determination or the genuineness of such claim, the principle amount received from such allottee in corporate debtor's account to the extent of 50% [subject to Clause 18.4(xx)] shall be refunded at the end of Qtr 12 from Start Date. Any other claim in relation to compensation, interest, penalty, etc. by any Allottees received in this period will be written off in full and shall be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company or the Resolution Applicant shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.”*

20. The present is a case where Appellant could not have prayed for any direction on the basis of orders of this Tribunal in **“Puneet Kaur vs. K.V.**

**Developers Pvt. Ltd. & Ors.”** because the Resolution Plan notice the claim of the Appellant of booking of 50 units. We have noted that in so far as 9 units which according to the Appellant are in his possession, Resolution Professional has submitted that necessary transfer documents shall be executed in event the Appellant complies the necessary terms and conditions. Hence, the said prayer made in I.A. No. 3640 of 2022 needs no consideration.

21. In view of the foregoing discussion, we are of the view that the Adjudicating Authority did not commit any error in rejecting I.A. No. 3640 of 2022 filed by the Appellant. There is no merit in the Appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Naresh Salecha]  
Member (Technical)**

**NEW DELHI**

**4<sup>th</sup> July, 2023**

*Archana*