

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

Company Appeal (AT) (Insolvency) No.407 of 2023

[Arising out of order dated 31.01.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in I.A. No. 5795/2022 in CP (IB) No. 923(PB)/2018]

IN THE MATTER OF:

Sunil Chauhan

S/o O. P. Chauhan Aged 51
R/o Flat No. 278, Pocket-I,
Sector-1 9, Dwarka,
New Delhi-110075.

...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.

...Respondent

Present:

For Appellant: Mr. Aishvary Vikram, Mr. Sanyam Saxena and Mr. Nubair Alvi, Advocates.

For Respondent: 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 Successful Resolution Applicant.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by the Appellant challenging the order dated 31.01.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi rejecting I.A. No. 5795 of 2022 in C.P.

Cont'd.../

(IB) No.923 (PB)/2018. I.A. No. 5795 of 2022 filed by the Appellant has been rejected. Aggrieved by which order this Appeal has been filed. Brief facts of the case necessary to be noticed for deciding this Appeal are:

- i. CIRP against the Corporate Debtor - M/s Today Homes Noida Pvt. Ltd. was commenced by order dated 20.08.2019. Public announcement was made on 24.08.2019, according to which the claim was to be filed by 03.09.2019.
- ii. On 04.03.2020 Resolution Plan was approved by the CoC.
- iii. The Appellant filed its claim on 21.08.2022 for an amount of Rs.14,74,000/- along with interest @ 18% to the Resolution Professional which claim was rejected.
- iv. Aggrieved by the rejection of claim, an application I.A. No. 5795 of 2022 was filed by the Appellant before the Adjudicating Authority, which came to be rejected by order dated 31.01.2023.

2. We have heard Shri Aishvary Vikram, learned counsel for the Appellant, Shri Apoorv Agarwal, learned counsel for Respondent No.1 - Resolution Professional and Shri Abhijeet Sinha, learned counsel for Successful Resolution Applicant.

3. Learned counsel for the Appellant submits that the Resolution Professional was duty bound to include the claim of the Financial Creditor in the Information Memorandum. Appellant had made various payments in the year 2011-12 which was acknowledged by the Corporate Debtor. Appellant

made a total payment of Rs.14,74,000/-, which amount ought to have been reflected in the Information Memorandum. It is submitted that as per the law laid down by this Tribunal in **“Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors., Company Appeal (AT) (Ins.) No.390 of 2022”**, the Resolution Professional was required to include the financial position of the Financial Creditor in the Information Memorandum. Various orders relied by Resolution Professional where claims of individual homebuyers were rejected on the ground of delay, does not preclude admission of the claim of the Appellant. Even though the allotment was cancelled on 27.08.2016, the amount received from the Appellant ought to have been reflected in the Information Memorandum. No payment was received by the Appellant in response to the cancellation. The amount paid by the Appellant deserved to be refunded and only 10% can be forfeited.

4. Learned counsel for the Resolution Professional refuting the submission of learned counsel for the Appellant submits that Appellant was not a unit holder, he having not paid the balance amount, his allotment was cancelled. The amount due on the Appellant of the Corporate Debtor is much more amount than which was received from the Appellant. The Appellant filed his claim after more than 800 days' delay, which was rightly rejected by the Resolution Professional. Large number of Homebuyers of the Corporate Debtor had filed belated claims which were rejected by the Adjudicating Authority. The order of the Adjudicating Authority rejecting the claim as barred by time was upheld by this Tribunal as well as by the Hon'ble Supreme Court. Resolution Professional has referred to various orders passed by the

Hon'ble Supreme Court dismissing the Appeal where similar issues were raised. It is submitted that unit of the Appellant having been cancelled by the ex-management of the Corporate Debtor in the year 2016, the same was not mentioned in the Information Memorandum of the Corporate Debtor. Judgment of **"Puneet Kaur vs. K.V. Developers Pvt. Ltd. & Ors."** is not attracted in the present case.

5. Learned counsel appearing for the Successful Resolution Applicant submits that the unit allotted to the Appellant was cancelled in 2016 due to non-payment. Appellant is not an allottee of the Corporate Debtor. The allotment to the Appellant was cancelled after giving several reminders. Issue pertaining to the claims belatedly filed by the individual homebuyer has already been settled and have been rejected and upheld upto the Hon'ble Supreme Court on several occasions which clearly prohibits similarly belated filed claim by the Appellant. It is submitted that the Resolution Plan contains a clause where those claims which have not been filed have been dealt with.

6. We have considered the submission of learned counsel for the parties and perused the record.

7. There is no dispute between the parties that the claim of the Appellant was submitted to the Resolution Professional only on 21.08.2022. There was delay of more than 800 days in filing the claim by the Appellant. The Resolution Plan of the Corporate Debtor had already been approved by the CoC on 04.03.2020. Several claims filed by the homebuyers of the same Corporate Debtor with delay were rejected by the Adjudicating Authority,

which orders were upheld upto the Hon'ble Supreme Court. We may notice the judgment and order in "**Civil Appeal No. 7907 of 2021, SP Probuild LLP vs. Rabinder Kumar Mintri**" where rejecting a similar appeal following was held by the Hon'ble Supreme Court:

“O R D E R

The Committee of Creditors has approved the Resolution Plan on 4th March, 2020 whereas the appellant filed a claim on 16th June, 2020 which was rejected by the Resolution Professional on 19th 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.”

8. Resolution Professional has also brought on the record several other orders of the Hon'ble Supreme Court which have similarly dealt with the issue pertaining to claims belatedly filed by individual homebuyers. The

learned counsel for the Appellant sought to distinguish the orders passed by Hon'ble Supreme Court in other cases. It is submitted that the orders passed by the Hon'ble Supreme Court with regard to cases of other homebuyers does not operate as res judicata. Learned counsel for the Appellant has referred to judgment of Hon'ble Supreme Court in **“(2011) 12 SCC 615, Fida Hussain & Ors Vs. Moradabad Development Authority & Anr.”**, where in Para 16 and 21 following was held:

“16. With regard to the contention that the decision of the Court in the case of Gafar did not operate as res judicata for the present batch of cases, we are of the view that the principles of Resjudicata would apply only when the lis was inter-parties and had attained finality of the issues involved. The said Principles will, however, have no application interalia in a case where the Judgment and/or order had been passed by a Court having no jurisdiction thereof and/or involving a pure question of law. The principle of Resjudicata will, therefore, have no application in the facts of the present case.

21. It is now well settled that a decision of this Court based on specific facts does not operate as a precedent for future cases. Only the principles of law that emanate from a judgment of this Court, which have aided in reaching a conclusion of the problem, are binding precedents within the meaning of Article 141. However, if the question of law before the Court is same as in the previous case, the judgment of the Court in the former is binding in the latter, for the reason that the question of law before the Court is already settled.

In other words, if the Court determines a certain issue for a certain set of facts, then, that issue stands determined for any other matter on the same set of facts.”

9. There can be no dispute that the principle of res judicata does not apply in case of the present Appeal since lis between the present Appellant and the Corporate Debtor was never raised and decided. We are, however, of the view that when belated claims raised by several other individuals were refused to the admitted by the Adjudicating Authority, which order were upheld upto the Hon’ble Supreme Court, no exception can be taken to the case of the Appellant. Admittedly, the claim filed by the Appellant was with more than 800 days’ delay and no error has been committed by the Adjudicating Authority in rejecting the application filed by the Appellant for admitting its claim.

10. Learned counsel for the Successful Resolution Applicant has referred to Clause of Resolution Plan where Resolution Plan deals with the claims of those individuals who has not filed claim in particular manner. In event, the Appellant is entitled for treatment of its claim in reference of any particular clause of the Resolution Plan, the Appellant is always at liberty to approach the Resolution Professional for consideration. We, however, reiterate that the rejection of the claim of the Appellant has become final which cannot be re-agitated by the Appellant.

11. The order cancelling the allotment of the Appellant has been brought on the record which indicate that the allotment was cancelled due to

non-payment of balance amount by the Appellant. As noted above, the Resolution Plan contains a clause which deals with the claims which have been filed as well as which have not been filed before the Resolution Professional. As observed above, in event, the Appellant is entitled for refund of part of its amount, it is always open for the Appellant to make a request to the Resolution Professional after approval of the plan, to deal his claim as per the Resolution Plan. We, thus, dispose of this Appeal in following manner:

- (i) The order dated 31.01.2023 dismissing I.A. No. 5795 of 2022 filed by the Appellant is upheld.
- (ii) The Appellant is at liberty to make an application to the Resolution Professional for refund of part of the amount, which he is entitle for as per the Resolution Plan after the approval of the plan by the Adjudicating Authority.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

4th July, 2023

Archana