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

**Company Appeal (AT) (Ins.) No. 1662 of 2023 &**
**I.A. No. 5816, 5991, 5993 of 2023**

**IN THE MATTER OF:**

**Rahul Jain** **....Appellant**

**Vs.**

**Nilesh Sharma** **....Respondent**
**Resolution Professional of Dream Procon Pvt. Ltd.**

**Present:**

| | |
|---|---|
| **For Appellant:** | **Mr. Shivam Kumar, Advocate.** |
| **For Respondent:** | **Ms. Varsha Banerjee, Advocate for R-1/RP.**<br>**Mr. Prithu Garg, Mr. Shivam Singh, Mr. Ashutosh Arvind Kumar, Advocates for SRA.** |

## J U D G M E N T

**Per: Justice Rakesh Kumar Jain:**

This appeal is directed against the order dated 11.08.2023 by which an application bearing I.A. No. 4954/2022 filed by the appellant in which the appellant made the prayer to admit his claim as a Financial Creditor in a class and to consider his case at par with the other unit buyers/claimants while implementing the Resolution Plan has been rejected primarily on the ground that the application has been filed belatedly. In brief, the case set up by the appellant is that he is the home buyer who has purchased the flat bearing unit number B-1901 situated at Plot No. GH - 02, Sector - 143, Noida, Uttar Pradesh in the project “Victory Ace” developed by the Corporate Debtor, namely, M/s Dream Procon Pvt. Ltd. for which the appellant has paid Rs. 43,53,983/- out of 60,00,300/-.

2. One of the Home buyer in the aforesaid project, namely, Ms. Priyanshi Arora, as a Financial Creditor, filed an application under Section 7 before the Tribunal against the Corporate Debtor which was admitted on 06.09.2019. The Respondent No.2, namely, Victory Ace Social Welfare Society (Association of the Home buyers of the same project) submitted the resolution plan which was approved by the CoC on 07.05.2021. The appellant submitted his claim on Form CA to the RP on 19.09.2022 after a delay of 980 days from the last date of submission of claim and 492 days after the approval of the plan by the CoC. The claim of the appellant was rejected by the RP on same day i.e. 19.09.2022 which led to the filing of I.A. No. 4954 of 2022 before the Tribunal. The Tribunal dismissed the application observing that the plan was approved on 07.05.2021 in the 11$^{th}$ meeting of the CoC by 90.66% votes and the claim is highly belated.

3. The Tribunal relied upon a decision of this Court in the case of '*Puneet Kaur vs. K V Developers Private Limited & Ors.*' in Comp. App. (AT) (Ins.) No. 390 of 2022 decided on 01.06.2022, holding that if the claim is filed after the approval of the plan by the CoC then it cannot be considered.

4. Counsel for the appellant has argued that the asset of the appellant has been reflected in the Information Memorandum by the RP and has also drawn our attention to the list of unit holders who had not filed the claim in which name of the appellant is at Sl. No. 52 in which it is reflected that the selling price of the unit is Rs.60,00,300/-, the amount received by the Corporate Debtor is Rs.49,26,674/- and the balance amount is Rs.10,73,626/-.

5. Counsel for the appellant has relied upon the same decision of this court in the case of Puneet Kaur & Ors. Vs. KV Developers Pvt. Ltd. & Ors. (supra) to contend that even if it is presumed that the appellant has not filed its claim even then this court has held that if the liability have been reflected in the Information memorandum then it is the duty of the RP to submit the detail of the Home buyers to the Resolution Applicant on the basis of which the Resolution Applicant shall prepare the resolution plan and place before the CoC for its consideration.

6. As against this counsel for the respondent has relied upon a decision of this court rendered in Comp. App. (AT) (Ins.) No. 1511 of 2023 '*Pooja Mehra vs. Nilesh Sharm*a & Ors.' decided on 19.04.2024 to contend that it was a case pertaining to the same Corporate Debtor in which the appellant is one of the home buyer. It is submitted that the claim of Pooja Mehra was declined by this court despite the fact that the decision in the case of Puneet Kaur & Ors. Vs. KV Developers Pvt. Ltd. & Ors. (supra) was cited. It has also been argued that in the case of '*M/s RPS Infrastructure Ltd vs. Mukul Kumar & Anr.'* in Civil Appeal No. 5590 of 2021 decided by Hon'ble Supreme Court, it has been held that after the approval of the plan by the CoC the claim cannot be considered.

7. In rebuttal, counsel for the appellant has submitted that the decision in the case of M/s RPS Infrastructure Ltd vs. Mukul Kumar & Anr. (supra) is on its own facts because in that case the record of the Corporate Debtor was not available with the RP and in this regard the Hon'ble Supreme Court has held that:

> *"If we analyse the aforesaid plea, it is quite obvious that Respondent no. 1 did what could be done to procure the Corporate Debtor's records by even moving an application under Section 19 of the IBC. That it was not fruitful is a consequence of the Corporate Debtor not making available the material. It is thus not even known whether there was a reflection in the records on this aspect or not."*

8. It is submitted that in the present case the liability of the Corporate debtor qua the appellant was clearly reflected in the Information Memorandum and his record was also made part of the Information Memorandum but the treatment given by the Resolution Applicant in the plan is of the extinguishment of their claim which is contrary to decision of this court in the case of Puneet Kaur & Ors. Vs. KV Developers Pvt. Ltd. & Ors. (supra).

9. We have heard Counsel for the parties and perused the record.

10. There is no dispute that the liability of the CD towards the Appellant is clearly reflected in the IM. The appellant has also filed the claim belatedly and the CoC has approved the plan but the plan has not been approved by the Adjudicating Authority so far as it is pending for its consideration. The appellant has basically relied upon a decision in the case of Puneet Kaur (Supra) in which this court has held that "in the preset case there is no denial that details of the Appellant(s) and other homebuyers, who could not file their claims has not been reflected in the IM. There being no detail of claims of the appellant(s), the resolution applicant could not have been taken any

consideration of the claim of the appellant(s), hence, resolution plan as submitted by resolution applicant cannot be faulted". However, at the same, in the case of Puneet Kaur (Supra) this Court has held that "however, we are of the view that the claim of those homebuyers, who could not file their claims, but whose claims were reflected in the record of the CD, ought to have been included in the IM and resolution applicant, ought to have been taken note of the said labilities and should have appropriately dealt with them in the resolution plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution as is seen in the present case. To mitigate the hardship of the Appellant, we thus, are of the view that ends of justice would be met, if direction is issued to resolution professional to submit the details of homebuyers, whose details are reflected in the records of the CD including their claims, to the Resolution applicant, on the basis of which resolution applicant shall prepare an addendum to the resolution plan, which may be placed before the CoC for consideration."

11. The argument of the Respondent that since the CoC has already approved the plan and the claim has been filed after the approval of the plan, the decision in the case of M/s RPS Infrastructure Ltd. (Supra) would come in the way of the Appellant because in that case it has been held that "the mere fact that the AA has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon."

12. In the aforesaid case, however, it has been observed by the Hon'ble Court in para 18 that "if we analyse the aforesaid plea, it is quite obvious that respondent no. 1 did what could be done to procure the CD's records by even moving an application under Section 19 of the Code. That it was not fruitful is a consequence of the CD not making available the material. It is thus not even known whether there was a reflection in the records on this aspect or not."

13. Further, since the claim was filed after delay of 287 days and creditor feigned ignorance about the CIRP about which the Hon'ble court has held that the Appellant being a commercial entity and had been litigating against the CD, therefore, it ought to have been vigilant enough to find out whether the CD was undergoing CIRP and once a public announcement of the CIRP has been made through newspapers, it would constitute deemed knowledge on the Appellant and the plea of not being aware of newspaper pronouncement is not the one which should be available to a commercial entity.

14. However, the present case pertains to the non-commercial entity like a homebuyer.

15. In the case of Pooja Mehra (Supra), relied upon by the Respondent, which was also against the same CD this court had found that there was no evidence/acceptable material on record of the actual payment of Rs. 50,00,000/- to the CD. In this regard, the observation made by this court in the said case is captured in para 102 which is reproduced as under:-

> "102. The claim of the Appellant is that since approval of Resolution Plan is pending before the Adjudicating Authority,

> its claim can be considered on merits. We have examined this issue in detail basis the facts of the case, wherein the Appellant seeks condonation of 540 days and basis the current position of law. It becomes unsustainable to accede to his request to allow his belated claim to be considered, particularly in the background that there is no acceptable material on record to suggest actual disbursement of Rs.50 lakhs to the Corporate Debtor and more so when the Appellant itself has filed Form - C and not CA raising its claim. There is also inconsistency in the description of the alleged unit being D2-601 or D2-2002 in the buyback agreement and allotment letter."

16. In our considered opinion, the decision in the case of Pooja Mehra (Supra) is not applicable because in that case it was not even proved that the Appellant had disbursed the amount in question to the CD whereas in the present there is no dispute that the Appellant had disbursed the amount after taking loan from the Bank and the said factum is part of the IM.

17. Thus, keeping in view the totality of circumstances, we are of the considered opinion that the controversy in hand is covered by the case of Puneet Kaur (Supra) and therefore, while allowing the present appeal and setting aside the impugned order, we direct the RP to submit the detail of the appellant reflected in the record of the CD including their claim to the resolution applicant on the basis of which the resolution applicant shall prepare an addendum to the resolution plan which may be placed before the CoC for consideration. The entire exercise should be completed within a period of three months from today and the addendum and the minutes of the CoC at the time of finalizing the resolution plan shall be considered by the AA at the time of the approval of the resolution plan which is pending consideration before the AA. The Resolution Professional may also bring to

the notice of the AA, the order of this date, so that the AA may await the addendum alongwith the minutes of the CoC which may be considered alongwith the approval of the resolution plan.

Pending I.As, if any, are hereby closed.

**[Justice Rakesh Kumar Jain]**
**Member (Judicial)**

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

**[Mr. Indevar Pandey]**
**Member (Technical)**

**New Delhi**
**14th May, 2025**
*Sheetal*