

**IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**IA No. 3640/2022
IN
CP (IB) No.923(PB)/2018**

In the matter of

Sunil Handa & Ors

...

Financial Creditor

Versus

Today Homes Noida Private Limited

...

Corporate Debtor

In the matter of

SP Probuild LLP.

...

Applicant

Versus

Rabinder Kumar Mintri

RP of Today Homes Noida Private Limited
No.1

.....

Respondent

One Group

SRA of Today Homes Noida Private Limited
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Respondent No.

Committee of Creditors of

Today Homes Noida Private Limited
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.....

Respondent No.

Order pronounced on: 30.11.2022

Coram:

Chief Justice (Retd.) Ramalingam Sudhakar : Hon'ble President

Shri Avinash K. Srivastava : Hon'ble Member (Technical)

Appearances :

For the Applicant

: Mr. Abhinav Vasisth, Sr Advocate
assisted by Ms. Astha Gupta,
Advocate, Ms. Niharika Gupta,
Advocate

For Successful Resolution Applicant

: Mr. Sudhir Makkar, Sr. Advocate

ORDER

Per: Avinash Kumar Srivastava, Member (Technical)

Brief facts of the case

1. The present application has been filed under Section 60 (5) IBC, 2016 r/w Rule 11, NCLT Rules, 2016 by the applicant herein for seeking following reliefs:
 - 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 part of the Resolution Plan; and;
 - iv. Direct Respondent No. 1 to execute registration of conveyance deeds for the nine flats whose possession had been handed over to the Applicant;
2. In the present matter , the CIRP was initiated on 20.08.2019 and Rabinder Kumar Mintri was appointed as IRP who was later confirmed as RP. The IRP published Form A on 25.08.2019 inviting claims and the last date for submission of claim was 03.09.2019. The applicant had paid consideration amount of Rs. 12,70,05,642/- (Rupees Twelve Crores Seventy Lakhs Five thousand Six Hundred And Forty Only) toward allotment of 50 flats in the project of the Corporate debtor, out of which 9 flats has been handed to the applicant in the year 2018 but the rest are yet to be handed over by the RP.
3. The applicant filed its claim before RP in Form CA dated 16.06.2020 which was rejected by RP on 24.03.2021 on the ground that the same was time barred as the resolution Plan had already been approved by COC and is pending for approval before this Adjudicating Authority.
4. Thereafter, an application was filed by the applicant against the rejection of claim by RP before this Adjudicating Authority bearing IA No. 3213 of

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2021 which was dismissed as being infructuous by this Adjudicating Authority vide order dated 21.09.2021. The appeal was also preferred against the order which was also dismissed by Hon'ble NCLAT vide order dated 10.11.2021 and then appeal was preferred before Hon'ble Supreme Court and Hon'ble Supreme court also upheld the view of the Hon'ble NCLAT and further stated that *the appellant is at liberty to pursue any other remedy , as available to him under the law.*

Submissions on behalf of the counsel for the applicant

5. The counsel for the applicant submitted that with the development of law related to acceptance of claim post the approval of Resolution Plan, the claim of the applicant is entitled to be admitted by COC and to support the above contention the learned counsel has placed reliance upon the judgment of Hon'ble NCLAT dated 01.06.2022 in the matter of ***Puneet Kaur v. K V Developers Private Limited in Company Appeal (AT)(Ins)No. 390 of 2020*** in which it was held that ***there is no reason for not collating the claims of such Homebuyers whose claims are reflected from the records of the Corporate Debtor, including their payments and allotment***".
6. It is further stated that the claim of the applicant was not included in the Information Memorandum by the RP despite the flats reflecting against the name of the applicant in the website of the Corporate Debtor and was further contended that the applicant is an allottee as prescribed under the Code and the documents provided by the corporate debtor.
7. It was further stated that due to inadequate publicity regarding the initiation of CIRP , the applicant was not aware about the public announcement, hence could not file its claim before RP and has filed its claim with delay of only 18 days from approval of the resolution Plan by COC and further relied on the Judgment of Hon'ble Supreme Court in the case of " ***Ghanshyam Mishra v. Edelweiss Asset Reconstruction Limited & Ors 2021(9) SCC 657***" in which it was stated that ***on the date of approval of resolution Plan by the Adjudicating Authority, all such claims , which are not part of the resolution plan , shall***

stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim , which is not part of the Resolution Plan” and thus contended that the extinguishment of the claim of the applicant shall happen only after approval of the Plan by the Adjudicating Authority.

Submissions on behalf of the counsel for the Successful Resolution Applicant

8. The learned counsel for the Successful resolution Applicant stated that the applicant is not a genuine homebuyer but is a speculative investor, who has purchased these flats in bulk at a very low price than the market price.
9. It was further contended that the present application is barred in terms of the principal of “prospective overruling” as the applicant has challenged the order of rejection of the claim by the RP before the Adjudicating Authority and further appealed before Hon’ble NCLAT as well as Hon’ble Supreme Court and therefore the applicant cannot again approach this Adjudicating Authority on the basis of the subsequent development in the terms of change in law by the Judgment of Hon’ble NCLAT . See **Puneet Kaur v. K V Developers Case.**
10. It was also contended that the Adjudicating Authority does not have power to review and recall its own order/judgement. In any case, it cannot sit in appeal over the NCLAT Order and the Hon’ble Supreme Court in this very same case as stated (*supra*). Further, it is submitted that the circumstances of present Application can be differentiated from that of the Puneet Kaur’s Case (*supra*). In latter case, the claim of Applicant was not included into Information Memorandum while the claim of the applicant in the present case has been duly provided in the Resolution Plan of the SRA and the same has been duly approved by the COC .It was further submitted that while dismissing the appeal of the applicant , the Hon’ble Supreme Court has directed the applicant to pursue any other remedy , available to him under the law and thus

contended that any other remedy available in law cannot in any manner be construed as they same remedy available under the Code.

Issue for consideration

11. Considering the contentions of the Applicant, before relying on the facts of the case, the issue that need to be answered is as follows :

Whether the order dated 21.09.2021 passed in IA no. 3213/2021 , which was upheld by Hon'ble NCLAT vide order dated 10.11.2021 and by Hon'ble Supreme Court vide order dated 12.01.2022 can be recalled on the ground of subsequent interpretation of law in the case of "Puneet Kaur vs. KV Developers" (*supra*).

12. The main grounds in the application is that the earlier order of this Tribunal and of the Hon'ble NCLAT and Hon'ble Apex Court in Civil Appeal No. 7907 of 2021 in the case of SP Probuild LLP v. Rabinder Kumar Mintri are overruled in the subsequent judgment in Puneet Kaur vs. KV developers which invalidated the judgement passed earlier and is sought to be recalled. It is further contended that when the judgment is overruled, the Applicant herein is competent to file this application to consider his belated claim. The Order passed by the Adjudicating Authority in I.A. No. 3213/2021 is contrary to the law laid down by the Apex Court as the Judgment was overruled retrospectively.

Findings and Analysis

13. We have considered the submissions made by both the sides and material on record.
14. It is an undisputed fact that an earlier Application filed as IA No. 3213/2021 by this applicant was rejected and was challenged before the Appellate Tribunal and Hon'ble Apex Court unsuccessfully and the order passed by the Tribunal rejecting the belated claim of the applicant attained finality.

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15. At this juncture , we would refer the judgment of the Hon'ble Apex Court in **"Union of India Vs. Madras Telephone SC & ST Social Welfare Association (2006) 8 SCC 662"** where the Hon'ble Apex Court held as follows:

The "doctrine of prospective overruling" was observed by this Court as a rule of judicial craftsmanship laced with pragmatism and judicial statesmanship as a useful tool to bring about smooth transition of the operation of law without duly affecting the rights of the people who acted upon the law that operated prior to the date of the judgment overruling the previous law." It has also been held in Sunil Raghuvanshi vs. State of M.P. on 24 January, 2019 (para 18) [2019 SCC OnLine MP 2265] – "However, where the rights of a party have been considered and declared, then the said proceedings cannot be reopened on the ground that the judgment on the basis of which, the rights were declared, has been overruled. The Supreme Court in the case of Union of India Vs. Madras Telephone SC & ST Social Welfare Assn. reported in (2006) 8 SCC 662 has held as under:

"21. Having regard to the above observations and clarification we have no doubt that such of the applicants whose claim to seniority and consequent promotion on the basis of the principles laid down in the Allahabad High Court's judgment in Parmanand Lal case have been upheld or recognized by the Court or the Tribunal by judgment and order which have attained finality will not be adversely affected by the contrary view now taken in the judgment in Madras Telephones. Since the rights of such applicants were determined in a duly constituted proceedings, which determination has attained finality, subsequent judgment of a court or tribunal taking a contrary view will not adversely affect the applicant

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.
18. Therefore, we find no merit in the contention of the learned Counsel for the applicant and consequently, the prayer in the application is deserved to be dismissed.
19. In the result, the **IA No.3640 of 2022** is here by **DISMISSED**.
20. The Registry is further directed to send the copy of the order to the IBBI also for their record.
21. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

ok

— Sd —

RAMALINGAM SUDHAKAR
PRESIDENT

— Sd —

AVINASH K. SRIVASTAVA
MEMBER(TECHNICAL)