

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

Company Appeal (AT) (Insolvency) No. 128 of 2025

[Arising out of the Impugned Order dated 24.10.2024 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-III in IA No. 112 of 2024 in CP(IB) No. 1768(ND)/2018]

In the matter of:

1. SHRI KRISHAN

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2. AMIT SINGH

S/o Mr. Sunder Singh
R/o 1272, 8 Biswas Mojiwala Kuan,
Gurgaon, Haryana-122001

...Appellants

Versus

1. H.S. OBEROI BUILDTECH PRIVATE LIMITED

Registered Office At:
Kh. No. 593, Mandi Road,
Gadaipur Bus Stand, Mehrauli,
New Delhi-110030
Email: h_s oberoi@hotmail.com

2. SHRI VIVEK PARTI

(Erstwhile Resolution Professional of
Corporate Debtor i.e. Celestial Estate Private Limited)
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3. SHRI AKASH SINGHAL

(Resolution Professional of
Earth Infrastructure Limited)
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BSZ Marg,
New Delhi-110002
Email: akash@kico.net

...Respondents

Present:

For Appellant : Mr. Ketan Madan and Mr. Dhananjay Jain, Advocates.

For Respondent :

WITH
Company Appeal (AT) (Insolvency) No. 129 of 2025

[Arising out of the Impugned Order dated 24.10.2024 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-III in IA No. 77 of 2024 in CP(IB) No. 1768(ND)/2018]

In the matter of:

- 1. PRITI BATRA**
W/o Mr. Dhiraj Batra
- 2. DHIRAJ BATRA**
S/o Late Mr. S.L. Batra
Both resident of BB/16-C, Janakpuri,
New Delhi-110058
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...Appellants

Versus

- 1. H.S. OBEROI BUILDTECH PRIVATE LIMITED**
Registered Office At:
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- 3. SHRI AKASH SINGHAL**
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...Respondents

Present:

For Appellant : Mr. Ketan Madan and Mr. Dhananjay Jain, Advocates.

For Respondent :

WITH
Company Appeal (AT) (Insolvency) No. 130 of 2025

[Arising out of the Impugned Order dated 24.10.2024 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-III in IA No. 599 of 2024 in CP(IB) No. 1768(ND)/2018]

In the matter of:

- 1. PARMINDER SINGH**
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...Appellant

Versus

- 1. H.S. OBEROI BUILDTECH PRIVATE LIMITED**
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- 3. SHRI AKASH SINGHAL**
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...Respondents

Present:

For Appellant : Mr. Ketan Madan and Mr. Dhananjay Jain, Advocates.

For Respondent :

WITH
Company Appeal (AT) (Insolvency) No. 131 of 2025

[Arising out of the Impugned Order dated 24.10.2024 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-III in IA No. 89 of 2024 in CP(IB) No. 1768(ND)/2018]

In the matter of:

1. AVTAR SINGH

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2. HARPINDER KAUR

W/o Mr. Sukhbir Singh Viridi
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Fateh Nagar, Jail Road, New Delhi-110018

...Appellants

Versus

1. H.S. OBEROI BUILDTECH PRIVATE LIMITED

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3. SHRI AKASH SINGHAL

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New Delhi-110002
Email: akash@kjco.net

...Respondents

Present:

For Appellant : Mr. Ketan Madan and Mr. Dhananjay Jain, Advocates.

For Respondent :

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present set of four appeals filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**‘IBC’** in short) by the Appellants arise out of the common Order dated 24.10.2024 (hereinafter referred to as **‘Impugned Order’**) passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi-III) in IA Nos. 112, 77, 599 & 89 of 2024 respectively in CP(IB) No. 1768(ND)/2018. By the impugned order, the Adjudicating Authority has refused to entertain the belated claims of the Appellants. Aggrieved by the impugned order, these four Appeals have been filed by the Appellant-home buyers against the rejection of their claims by the Successful Resolution Applicant- H.S. Oberoi Buildtech Private Limited.

2. Since all the four appeals have been filed against the same impugned order and each of them raise near identical facts and questions of law, we propose to consider the facts contained in I.A. No. 112 of 2024 to decide all the appeals.

3. The brief background of the present matter at hand is that the Appellant is a home-buyer in a project named “Earth Iconic” which was being developed by Earth Infrastructure Ltd. (**“EIL”** in short). The Appellant had received an allotment letter from EIL on 31.06.2012 and had paid a sum of Rs 15,15,450/- to EIL on instalment basis against basic sale consideration of Rs 22,82,918/-. On 06.06.2018, Corporate Insolvency Resolution Process (**“CIRP”** in short) was initiated against EIL and subsequently CIRP was initiated against Celestial Estate Pvt. Ltd. (**“CEPL”** in short) on 11.03.2019 who were the land owners of

the said project. The Adjudicating Authority on 15.03.2021, had directed EIL to transfer the partly constructed structure of Earth Iconic project to CEPL and most of the creditors of EIL had transferred their claim to CEPL.

4. It is the claim of the Appellant that they came to know about the CIRP proceedings of the Corporate Debtor only in November 2023. Since the Appellant was unaware of the CIRP of the Corporate Debtor, he was unable to file his claim before the Resolution Professional (**“RP”** in short) of EIL or CEPL within the prescribed time line.

5. It has been admitted by the Appellant that he was unable to adhere to the prescribed time-line within which he was required to file the claim before the RP. By the time, the Appellant could file their claim, the resolution plan of the Successful Resolution Applicant (**“SRA”** in short) had already been approved by the Adjudicating Authority. The Appellant filed their claim before the SRA by email dated 10.12.2023 along with all documents including payment receipts and requested the SRA to consider their claims. The Appellant however received no response from the SRA. Since the SRA did not respond to the request of the Appellant to accept their claim, IA No. 112 of 2024 was filed before the Adjudicating Authority for directions to the SRA to accept their claim. Submission was pressed by the Ld. Counsel for the Appellant that the approved resolution plan by not factoring in their claim had ignored the interest of the Appellant and other similarly placed home-buyers. Furthermore, since their claims have been extinguished by the resolution plan, their interests have been severely prejudiced.

6. It was pointed out that in terms of Regulations 6-A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, there is a duty cast on the RP to send personalised communication to all the creditors about the ongoing CIRP besides publication in the newspaper and websites. The RP never sent any communication to the Appellant but only issued publication in the newspapers. This was an irregularity since the name of the Appellant was reflected in the CRM of the Corporate Debtor. It was submitted that the Appellant is aggrieved by the conduct of the RP for not having incorporated their claim in the list of home-buyers though the Appellant had paid substantial amount of the sale consideration.

7. It was also submitted that the resolution plan was bad in law as it was violative of the legal principles laid down in the judgment of this Tribunal in ***Puneet Kaur Vs KV Developers Ltd.*** in ***CA(AT)(Ins) No. 390 of 2022*** wherein it has been clearly held that claim of home-buyers who could not file their claims but whose claims are reflected in the record of the Corporate Debtor ought to be included in the Information Memorandum. It was also pointed out that the SRA cannot be unfair to the Appellant simply because their claims were not reflected in the Information Memorandum of the Corporate Debtor. It was contended that the provisions of IBC have been misused to extinguish the claims of bonafide creditors while paving way for unjust enrichment for the SRA.

8. We have duly considered the arguments advanced by the Learned Counsel for the Appellant and perused the records carefully.

9. When we see the material on record, we notice that the RP had invited claim on 27.03.2019 with the last date for filing of claims on 10.04.2019.

Form-G was published on 26.09.2019 and IM was issued on 05.10.2019. The resolution plan was submitted with the RP on 04.11.2019 which was accepted by the CoC on 16.11.2019. The resolution plan was approved by the Adjudicating Authority on 15.03.2021. It is an admitted fact that for the first time the Appellant filed their claim on 10.12.2023. When seen from the date of approval of resolution plan by CoC, the claims were filed after about 4 years and 1 months. When measured from the date of approval of resolution plan by the Adjudicating Authority, the delay was 2 years 9 months and when seen from the last date of filing claims as fixed by the RP, the delay is about 4 years and 8 months. Seen from any angle, the Appellant had filed their claim belatedly. Quite obviously, therefore, the claim did not get reflected in the Information Memorandum. We are therefore not persuaded to believe that the RP acted in a manner so as to deliberately ignore the claims of the Appellant. In any case, after having slept over their claims for such an inordinately protracted period of time, the Appellant cannot raise the plea that the Information Memorandum was flawed for not factorising their claim.

10. Further, when we look at the impugned order, we find that the relevant clauses in the resolution plan has been noted which clearly provided an opportunity for all those who had filed belated claim or not filed claim within the extended period provided under Clauses 6.5 and 6.13(iv)(c) of the resolution plan. In terms of the above-cited clauses, those who had not filed claim within six months from the date of submission of the resolution plan, the belated claim was to be accepted with additional charges of Rs 700 per sq.ft. and those who had not filed claim between six to twelve months from the date of submission of

resolution plan the same was to be accepted on payment of additional charge of Rs 2000 per. sq.ft. Para 6.13(iv)(c) provided that no claim would be accommodated after a period of twelve months. The Appellant undisputedly filed their claim after 27 months from the expiry of one year period and hence the SRA was not expected to cater to such claims which were never filed.

11. To expect belated claims to be accepted by the SRA and that too after such a massive delay of 1700 days from the last date for filing of claims would tantamount to subjecting the SRA to the uncertainty of undecided claims. There is a catena of judgements of the Hon'ble Apex Court wherein it has been held that the Information Memorandum should be a genuine and correct reflection of the liabilities and no surprise claims should be flung on the resolution applicant as that would disrupt the successful resolution of the Corporate Debtor and defeat the objectives of IBC of making CIRP a time-bound process.

12. Now we come to the contention of the Appellant that the RP is required to prepare proper Information Memorandum after consideration of the books of the Corporate Debtor and in not having done so, their claims have been defeated which has rendered the plan unfair and inequitable. In support of their contention that the Resolution Applicant ought to have taken note of such liabilities and appropriately deal with them in the resolution plan reliance has been placed on the judgement of this Tribunal in ***Puneet Kaur judgement.*** However, the facts of the present case are distinguishable. In the ***Puneet Kaur*** matter, the delay in filing of claims was less than one year and at the time of filing of claims, the resolution plan had not yet been approved by the Adjudicating Authority. In the present case, at the time of filing claims, the

resolution plan had been approved by the Adjudicating Authority already and the claims had been filed after lapse of 2 years and 9 months from the date of approval of the resolution plan by the Adjudicating Authority.

13. More importantly, the ***Puneet Kaur judgment*** cannot come to the aid of the Appellant since this judgement has itself adverted attention to the judgment of Hon'ble Supreme Court in ***Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (2021) 9 SCC 657*** which held that once resolution plan is approved by the Adjudicating Authority, the claims as provided in the resolution plan shall stand frozen and all claims which are not part of the resolution plan shall stand extinguished.

14. Claims not part of the resolution plan are considered extinguished under the settled position of law as held by the Hon'ble Supreme Court in the ***Ghanshyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited (2021) 9 SCC 657***, wherein it held that:

68. All these details are required to be contained in the information memorandum so that the resolution applicant is aware as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the corporate debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the adjudicating authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is that he should start with fresh slate on the basis of the resolution plan approved.

"102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the

Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of 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.

15. It has also been held by the Hon'ble Supreme Court of India in ***M/s RP Infrastructure Ltd. vs Mukul Kumar & Anr. in Civil Appeal No. 5590 of 2021*** that even after the resolution plan is approved by the CoC and is pending before the Adjudicating Authority, new claims cannot be imposed upon the resolution applicant. The relevant excerpts of the judgement reads as under:

“21. The mere fact that the Adjudicating Authority 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 person who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.

22. We have thus come to the conclusion that the NCLAT's impugned judgment cannot be faulted to reopen the chapter at the behest of the appellant. We find it difficult to unleash the hydra-headed monster of undecided claims on the resolution applicant.”

16. We are therefore of the considered view that when the plan has already been approved by both the CoC and the Adjudicating Authority, it cannot be reopened now on the basis of claims being belatedly agitated by the Appellant who for no justifiable reasons had clearly dropped the guard of being vigilant in pursuing his claims within the time-lines laid down by IBC. Any indulgence shown by way of belated admittance of claim after the resolution plan is approved by the Adjudicating Authority, is also likely to jeopardise the CIRP

since the resolution plan is already under implementation. The Adjudicating Authority has not committed any error in the given facts and circumstances in not acceding to the request of the Appellant for admission of their claims.

17. In the light of the above discussions, we do not find any cogent grounds which warrants any interference in the impugned order. The impugned order passed by the Adjudicating Authority, not suffering from any infirmities, is hereby affirmed. Accordingly, all the four Appeals being devoid of merit are dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

Place: New Delhi

Date: 07.03.2025

Abdul/Harleen