

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 28 of 2024

IN THE MATTER OF:

Sonia Kapoor

...Appellant

Versus

**Arunava Sikdar,
IRP Dream Procon Pvt. Ltd. & Anr.**

...Respondents

Present:

For Appellant: **Ms. Eshna Kumar, Mr. Harpreet Singh Malhotra,
Mr. Siddharth Bhatli, Ms. Khyati Jain and Ms.
Anvesha Jain, Advocates.**

For Respondents: **Mr. Akash Srivastava, Ms. Varsha Banerjee,
Advocates. Ms. Prithu Garg, Mr. Shivam Singh
and Mr. Ashutosh Arvind Kumar, Advocates for
R2.**

O R D E R
(Hybrid Mode)

03.07.2025: Amended Memo has been filed which is taken on record.

Heard learned counsel for the Appellant, learned counsel appearing for the 'Resolution Professional' as well as learned counsel appearing for the Successful Resolution Applicant.

This appeal has been filed against the order dated 11.08.2023 passed by the 'National Company Law Tribunal' (NCLT), New Delhi, Court-3 by which I.A. No. 3419/2021 filed by the Appellant has been rejected.

CIRP of the Corporate Debtor (Dream Procon Pvt. Ltd.) commenced on 06.09.2019. The IRP invited the claims, the Resolution Professional after

receiving the claims prepared list of Financial Creditor. List was also prepared of those Financial Creditor who have not filed claim till 17.06.2020 in which one of the unit mentioned was A-1-104.

Appellant name was also mentioned in the list of allottees who have not filed their claims with sale price. The amount received was also mentioned with balance receivable.

Appellant could not file claims within time allowed. On the basis of claim received, the Resolution Applicants submitted the resolution plan which came to be approved by the Committee of Creditors on 07.05.2021.

Appellant after approval of the resolution plan on 07.05.2021 filed claim in Form CA on 24.06.2021. Appellant claim having not received within time. It was rejected by the Resolution Professional. I.A. No. 3491/2021 was filed in the IA appellant prayed for following reliefs:

- (a) Allow present application to enlarge or extend time to submit claim by the Applicant to the Resolution Professional to admit after verification and consequently*
- (b) Condone the delay in filing claim before the Resolution Profession; and*
- (c) Pass such order or further order(s) as deemed fit and appropriate in interest of justice.*

Adjudicating authority heard the applicant and also noticed the Judgement in **Puneet Kaur Vs. M/s K.V. Developers Private Limited Company Appeal (AT) (Ins) No. 390 of 2022**, decided on 01.06.2022

and took the view that the claim filed after the approval of the plan, by the CoC cannot be admitted. Adjudicating Authority also noticed in the order that the Resolution Professional upon due verification of the Books of Account of the Corporate Debtor duly reflected the unit for which the present belated claim has been filed in the list of flats, but the appellant did not file any claim, IA is devoid of any merit and rejected. Aggrieved by the order rejecting the claim, Appellant has come up in this appeal.

Ld. Counsel for the Appellant challenging order submit that in view of the laid down in ***Puneet Kaur Vs. M/s K.V. Developers Private Limited Company Appeal (AT) (Ins) No. 390 of 2022***, the resolution applicant was obliged to consider the claim of the amount receipt from the appellant which was reflected in list prepared by the Resolution Professional. It is submitted that in the resolution plan there was provisions that all claims which have been filed shall be extinguished.

Ld. Counsel for the Appellant submitted that on similar facts in ***Company Appeal (AT) (Ins) No. 1662 of 2023 Rahul Jain Vs. Nilesh Sharma***, In which case the claim of the appellant arose out of the same CIRP and the appellant application for accepting the belated claim was rejected. Ld. Counsel for the Appellant submit that this tribunal has directed the Resolution Professional to consider and place before the Resolution Applicant who was directed to prepare an addendum to the plan and place it before the Committee of Creditors. It is submitted that the said

order was passed only on 04.05.2025 and time allowed has yet not been completed and process is on.

Ld. Counsel for the Resolution Professional submits that in the present case the amount received from the appellant was reflected in the book of the amount.

It is further submitted that in the resolution plan, the resolution applicant took decision to adjust unclaimed units to some other allottees. Hence the present case is distinguishable with the Judgement of this tribunal in ***Rahul Jain Vs. Nilesh Sharma***.

Ld. Counsel for the Resolution Professional has further relied on judgement of this tribunal in ***Company Appeal (AT) (Ins) No. 1511 of 2023, in the matter of Pooja Mehra Vs. Nilesh Sharma***, where belated claim filed by the allottees was not accepted, it was rejected an appeal was also dismissed.

Ld. Counsel for the Resolution Applicant in support of the impugned order relies on the Judgement of Hon'ble Supreme Court judgment in ***Jaypee Kensington Boulevard Apartments Welfare Association and others Vs. NBCC (India) Limited and others*** and submit that appellant has no right to file the appeal, she being only one homebuyers.

It is submitted that the Resolution Plan has already been approved by Committee of Creditors and Adjudicating Authority has rightly rejected the application of the appellant.

Heard Ld. Counsel for the parties. From the facts brought on record, it is clear that claim of the applicant's unit as well as the amount paid by applicant are reflected in the list prepared at page **146 of the Appeal Paper Book**. "Who had not filed their claim" and the appellant is mentioned in Serial No.1.

Ld. Counsel for the appellant has relied on Judgement of this tribunal in ***Puneet Kaur Vs. M/s K.V. Developers Private Limited Company Appeal (AT) (Ins) No. 390 of 2022***. Considering the case of the homebuyers who filed belated claims, this Tribunal took the view that rejection of belated the claims cannot be faulted on the facts of the case:

"In the present 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 Information Memorandum. There being no detail of claims of the Appellants(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, 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 Corporate Debtor, ought to have been included in the Information Memorandum and Resolution Applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the Resolution Plan. Non-consideration of such claims, which are reflected form the record, leads to inequitable and unfair resolution as is."

Ld. Counsel for the Appellant has also relied to the resolution plan extract of the resolution plan:

"No claim shall be entertained or considered after the approval of Plan by the CoC and all claims, if existing, whether filed or not with the RP, shall stand extinguished on the Effective Date."

The judgement relied in the **Rahul Jain Vs. Nilesh Sharma** was case with regard to unit B-1901 of the same CIRP.

This tribunal after hearing parties in paragraph 10,16 & 17 laid down following:

“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 liabilities 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.”

xxx

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.”

The judgement of this tribunal for “**Puneet Kaur Vs. M/s K.V. Developers Private Limited Company Appeal (AT) (Ins) No. 390 of 2022**” was relied in para 10 as above by 3 Member Bench Tribunal has directed Resolution Professional to submit the details reflected in the books of the Corporate Debtor to the resolution application on the basis, the Resolution Applicant was directed to prepare an addendum the which was to be placed before the CoC.

Ld. Counsel for the Resolution Professional sought to distinguished the above judgement, relying on Judgement in **Company Appeal (AT) (Ins) No. 1511 of 2023 Pooja Mehra Vs. Nilesh Sharma**. 3 Member Bench after noticing the Judgement **Pooja Mehra Vs. Nilesh Sharma** has issued direction.

The Submission of Resolution Applicant submitted that unclaimed units have been adjusted. Hence, due consideration of appellant's case has taken place. The fact that unclaimed units are adjusted cannot lead to conclusion that claims have been duly considered. The payment made by the appellants have not been considered against the unit. Hence, the present case is fully concord by 3 Member Bench, Judgement in ***Rahul Jain Vs. Nilesh Sharma.***

Resolution Professional can give details to the Resolution Applicant of the Appellant who may include of the appellants claim in Addendum and place it before the CoC for consideration. We are of the view same direction need to be issued in the present appeal.

We dispose this appeal in terms of directions passed in para 17 of the Judgement dated 14.05.2025 as noticed above. Appeal is disposed of accordingly.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

Abhishek/nn