

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1511 of 2023

(Arising out of the Impugned Order dated 11.08.2023 passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench-III in I.A. (IBC) No.3462/2021 in C.P. (IB) No. 1771/ND/2018]

IN THE MATTER OF:

**Pooja Mehra
W/o Shri Punit Mehra
R/o E-1820, Gaur Sport Wood
Sector 79, Noida
Uttar Pradesh – 201010**

...Appellant

Versus

**1. Nilesh Sharma
(Resolution Professional for
Dream Procon Pvt. Ltd.
Office Address:
Withworth Insolvency Professionals
D-54, First Floor, Defence Colony
New Delhi – 110024
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**Through Counsel for Nilesh Sharma in NCLT
Aditha Advisors (Mr. Ashu Kansal)
Office Address:
D-327, Lower Ground Floor,
Defence Colony
New Delhi – 110024**

...Respondent No.1

**2. Victory Ace Social Welfare Society
(Resolution Applicant)
Office Address:
No. 1703, Block W, Sector 121, Noida
Gautam Buddha Nagar
Uttar Pradesh – 201301**

Email: victoryacehbwa@gmail.com
Present:

...Respondent No.2

For Appellant : Mr. Vaibhav Mahajan and Ms. Harshita Aggarwal, Advocates.

**For Respondent : Ms. Varsha Banerjee, Ms. Mahima Ahuja, Advocates for RP
Mr. Parth Bhatia, Mr. Prithu Garg, Mr. Shivam Singh, Advocates for R2-SRA.**

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

[Per: Arun Baroka, Member (Technical)]

The Instant Appeal is preferred by the Appellant Ms. Pooja Mehra, who is aggrieved by the order dated 11.08.2023 whereby National Company Law Tribunal, New Delhi Bench-III (hereinafter referred to “The Adjudicating Authority”) had dismissed the I.A. (IBC) No.3462/2021 in C.P. (IB) No. 1771/ND/2018, which is an application filed by the Appellant seeking to condone delay in filing the claim and to direct Respondent No.1 i.e. Resolution Professional Mr. Nilesh Sharma to admit the claim of the Appellant’s in the category of “Financial Creditor”.

2. The Insolvency Petition against the Corporate Debtor was admitted by the Adjudicating Authority *vide* Order dated 06.09.2019 and Mr. Manish Gupta was appointed as Interim Resolution Professional (“**IRP**”).

3. The IRP invited claims from all creditors by issuing an Advertisement in Form A dated 17.10.2019 in the Financial Express (English) and Jansatta (Hindi) Delhi/NCR edition on 18.10.2019. The last date of submission of Claims was fixed as 29.10.2019. The maximum period of 90 days from the

date of publication of Form A expired on 15.01.2020. Mr. Nilesh Sharma was appointed as regular Resolution Professional on 16.01.2020. The last date for submission of claims was 15.01.2020.

4. Plan of Respondent No. 2, an association of homebuyers having over 220 members was approved by the Committee of Creditors ("CoC") on 15.05.2021 with 90.66% votes and is the Successful Resolution Applicant. The Plan is pending consideration before the Adjudicating Authority.

5. The Claim Form of the Appellant was submitted on 20.07.2021. There is a delay of **552 days** in submitting the Claim.

6. The Adjudicating Authority by the Impugned Order, has rejected the Appellant's application for acceptance of belated claim after approval of the Resolution Plan by the CoC.

Submission of the Appellant / Pooja Mehra:

7. Appellant, along with her father i.e. Late Sh. Tej Paul Verma (Appellant No 2 before the AA) had invested a sum of Rs.50,00,000/- towards the total sale consideration in a project namely Victory Ace Social Welfare Society, which was supposed to be developed at GH-02, Sector 143, Noida Gautam Budh Nagar.

8. The Corporate Debtor i.e. Dream Procon Pvt. Ltd. issued an allotment letter on 15.05.2016, qua which Unit No. D2 – 601 was allotted to the Applicants. The Corporate Debtor had duly acknowledged the receipt of the

payment made by the Appellants amounting to Rs.50 lakhs vide a payment receipt dated 15.05.2016 (cash receipt). Simultaneously, a Buy Back Agreement dated 15.05.2016 (same day) was also executed between the Corporate Debtor and the Appellants. As per this agreement, the Corporate Debtor undertook to give monthly assured returns amounting to Rs. 60,000/- per month to Appellant No.1 and Rs.40,000/- to Appellant No.2 w.e.f. 15.05.2016. The Corporate Debtor also issued 18 post-dated cheques to each of the Appellants for the period from 15.06.2016 to 15.11.2017. Buy Back Agreement also provides that the Appellants have the right to cancel the booking after the expiry of one year from the date of execution of this agreement and as per that Corporate Debtor will be liable to refund the entire sale consideration. Two post-dated cheques with amounts of Rs.30 lakhs and Rs.20 lakhs were also issued in favour of the Appellant and her late father.

9. The Corporate Debtor failed to handover the possession of the unit to the Appellants within the stipulated time line. The Corporate Debtor also failed to make payment towards monthly assured returns and further has failed to buy back the property as per the agreement.

10. The Corporate Debtor was liable to make full refund of entire sale consideration of Rs. 50 lakhs and also make payment of Rs. 18 lakhs towards assured monthly returns from 15.06.2016 till 15.11.2017 as per the agreement and also interest amount payable to Rs. 13,33,333/-.

11. The Resolution Professional i.e. Respondent No.1 was managing the Corporate Debtor and was in control of possession of entire list of homebuyers / allottees. Respondent No.1 declared 106 units as unclaimed units, even though, he had information about the same units. Resolution Professional did not scrutinise carefully and the claims of many homebuyers were declared unclaimed and termed as unsold inventory.

12. The Appellant came to know about the CIRP of the Corporate Debtor in July, 2021 and it filed its claim on 20.07.2021 with the Respondent No.1.

13. Resolution Professional/Respondent No.1 failed to either accept or reject the claim within 7 days of filing the claim.

14. The Appellants approached Adjudicating Authority under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("Code") read with Rule 11 of the NCLT Rules, 2016 seeking condonation of delay in filing claim and seeking a direction to Respondent No.1 to include the claim of the Appellants in the list of homebuyers. The Appellants claim that a delay in filing was neither intentional nor wilful but due to no knowledge of the proceedings.

15. Appellant also seeks to exclude the period from 15.03.2020 till 28.02.2022 due to the order of ***Hon'ble Supreme Court dated 10.01.2022 in Suo Motu Writ Petition (C) No. 3 of 2020 titled "In Re: Cognizance for Extension of limitation"*** due to the Covid – 19 crises.

16. The Committee of Creditors ("CoC") had approved the Resolution Plan on 07.05.2021 in its 11th Meeting of the CoC. But the claim was filed on 20.07.2021 by the Appellant. The Appellant relies on the case ***Ghanashyam Mishra and Sons Pvt. Ltd. vs Edelweiss Asset Reconstruction (2021) 9 SCC 657*** as per which approval of Resolution Plan by CoC does not amount to extinguishment of claim since the same can only occur only when the resolution plan has been approved by the Adjudicating Authority.

17. The Appellant claims that Respondent 1/ Resolution Professional has denied its claim, which is barred in terms of the provisions of IBC and Regulation 12(2) of the CIRP Regulations.

18. The Appellant claims that the resolution plan is violative of Section 65 of the Indian Contract Act, 1872. By virtue of this Section the Respondents are liable to restore the benefit received from the allotment of units which have been now held to be void.

"65. Obligation of person who has received advantage under void agreement, or contract that becomes void. — When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it "

19. Further the Resolution Plan also extinguishes the claims of all who could not file their claim within stipulated time. There is no recourse given to them and the amount deposited stands forfeited as per the resolution plan. Clause No.6.6 of the resolution plan titled extinguishment of rights of Financial Creditors mentions that any claim that has not been filed or not

accepted by the Resolution Professional shall stand extinguished and shall no longer be payable. Even the benefit of “cancellation, termination and forfeiture” clause of the resolution plan entitles refund of 70% to the allottees. The Resolution plan in its current form unjustly enriches the Respondent No.2 / Successful Resolution Applicant (SRA) in various ways. Firstly, by forfeiting the allotment of homebuyers, who filed their claims belatedly. Secondly, it handovers these units to the Respondent No.2 free from any encumbrance to execute fresh sale to third persons. Thirdly, it snatches the right of such homebuyers whose claims were rejected to refund their allotment money altogether.

20. The Appellant has relied on ***Puneet Kaur v. K.V. Developers Private Limited, Company Appeal (AT) (Insolvency) No. 390 of 2022, dated 01.06.2022 of this Tribunal***, wherein it was held that Regulation 36(2) of the CIRP Regulations, 2016 obliges the RP to include assets and liabilities of the Corporate Debtor and also the liability towards those homebuyers who have not filed their claims and is required to be included in the Information Memorandum. The information memorandum (on the basis of which resolution plan is made) includes all assets and liabilities of the corporate debtor, all of which shall be appropriately dealt with in the resolution plan, since non-consideration of claims will lead to unfair resolution. It was also held that when payments have been received by Corporate Debtor and allotments letters have been issued to homebuyers, then the liabilities

towards the homebuyers cannot be wished away only because there was a delay in filing a claim before the Resolution Professional.

21. The Appellant claims that Resolution Professional/Respondent No.1 has not carried out its statutory duties as prescribed under Section 25 of the IBC to maintain an updated list of claims as per Section 25(2)(e) of the IBC and prepare the Information Memorandum of Section 29 as per 25(2)(g) of the IBC. Respondent No. 1 / RP has not collated and verified the claims. The RP prepared a list of 112 units still unclaimed by the homebuyers and by excluding such claims from the Information Memorandum, the RP has benefited the SRA, since this exercise has increased the number of unsold inventory of units and at the same time, it has caused unjust enrichment to the SRA.

22. Resolution Professional/Respondent No.1 in its written submissions before the Adjudicating Authority has claimed that as per Customer Relationship Management (CRM) data, Unit No. D2-601 was allotted to one Mr. Ashok Kumar Sharma and that claim on behalf of Unit No. D2-601 was already admitted and was included in the list of claims under the category of first sale. The Appellant claims that this is a new pleading which was not their originally and has been raised for the first time in the written submission. Resolution Professional/Respondent No.1 has played a fraud, as this unit was in his possession of and no such submission of allotment to another person was made before the Adjudicating Authority, even orally also. The Adjudicating Authority failed to appreciate the ratio laid down in the Hon'ble

Supreme Court that **‘Arikala Narasa Reddy vs. Venkata Ram Reddy Reddygari & Ors.’ (2014) 5 SCC 312**, wherein it was held that a party cannot be permitted to travel beyond its pleadings.

23. Appellant claims to be a victim of the fraud committed by the Corporate Debtor and its Directors against her and most of the other allottees as well. The Appellant cannot be made to suffer because of the discrepancies of the internal management of the Corporate Debtor. In fact, as per the Doctrine of Indoor Management a.k.a. Turquand's Rule, the Appellant needs to be protected as she entered into a contract with the Company and if a company (corporate debtor in this case) enters into a contract, the obligations of following company's policies falls on the members of the Corporate Debtor (Directors of the Corporate Debtor in this case), and not on the Appellant.

Submissions of the Resolution Professional / Respondent No.1

24. The CIRP of the CD has already culminated into the approval of a resolution plan submitted by Victory Ace Social Welfare Society (SRA), by the CoC with 90.66% voting share in its 11th Meeting held on 07.05.2021. It is pending for approval before the Adjudicating Authority in I.A. No.3250 of 2021 filed under Section 30(6) of the Code on 09.06.2021. The Application filed by the Appellant is a belated attempt to circumvent the law and seek an illegal entry into the CoC and the list of Financial Creditors.

25. The Appellant is seeking possession of the unit which is registered in the name of one Mr. Ashok Kumar Sharma, whose claim was submitted within time and has been duly accepted by the RP. As per the CRM data, the

unit bearing D2-601 is registered in the name of Mr. Ashok Kumar Sharma. That the claim of this person was submitted in time and has been duly admitted. The claim of Mr. Sharma is duly reflected in the list of claims under the class of first sale.

26. As the Appellant had made payment in cash, the alleged receipt dated 15.05.2015 is not an accounting receipt, which does not have a serial number or not accounted for in the books of account. The payment of Rs.50,00,000/- is not reflected in the books of accounts of the Corporate Debtor. The receipt also does not bear any receipt number, stamp or diary number of the Corporate Debtor or whether the amount was paid in cheque or cash. Therefore, the same cannot be treated as proper account receipt. Respondent No.1 relies upon the judgment of this Tribunal in **“Shabeena Arshad & Anr. Vs. Nilesh Sharma, RP of Dream Procon Pvt. Ltd.”** whereby it was held that incomplete agreements along with payments claimed to be made by parties but not supported with any of the entries in the books of accounts of the Corporate Debtor cannot be accepted by the Resolution Professional and the claim preferred in itself would not be maintainable.

27. Resolution Professional / Respondent No.1 claims that this is a case based on no disbursal of any nature by the Appellant to the Corporate Debtor. The Appellant has failed to provide any material to establish the disbursal of any amount towards the Corporate Debtor. The receipt placed on record fails to meet the requirements of acceptable accounting receipt. There is absence of any corroborative recognition and entry of the said receipt in the books of

the Corporate Debtor, so the RP cannot admit the said proceed/claim. Such an instrument which provides for assured return cannot be construed as a proof of disbursal or payment of any consideration by the Appellant towards the purchase in the said flats. The Resolution Professional / Respondent No.1 does not hold any custody of the allotment letters, buy back agreement or copy of any alleged cheques with respect to assured returns. The RP/ CD did not have access to the entire records of the Corporate Debtor. With the help of RP of the associate concern of the Corporate Debtor i.e. Indirapuram Habitat Centre Pvt. Ltd., RP could locate the CRM data. The Appellant has not yet established any rights exercised by her over the unit in question.

28. Resolution Professional / Respondent No.1 notes that the Appellant herein is a speculative investor who was seeking to earn profits out of assured returns and thus, holds no locus or any ground to challenge the resolution plan duly approved by the CoC.

29. Resolution Professional / Respondent No.1 further states that the law regarding belated claims is settled. It relies upon the judgment of “**Harish Polymer Product Vs. George Samuel, 2021 SCC OnLine NCLAT 210**” which has held if the claims of the different creditors are being accepted in a phase manner and/or on such belated stage, that too after the stipulated time, so provided for submitting claims, in that event, the Resolution Plans can never get materialized and there would be no resolution of Corporate Debtor which is main object of the IB Code, more so, when CIRP is to be completed in a time bound manner.

30. The Resolution Applicant submits that his resolution plan was based only on the basis of the Information Memorandum published by the Resolution Professional. The Information Memorandum contains the List of Creditors prepared by the RP on the basis of claims received. Resolution Applicant cannot be asked to submit a plan beyond the information which is available in the Information Memorandum. Based on the information provided by the Consortium Applicant (RA) which is a consortium of homebuyers within the project of the Corporate Debtor itself, submitted a resolution plan in their own commercial wisdom which the RP certified to be in compliance of Section 30 of the Code. The Resolution Applicant which is the association of homebuyers have also provided alternative units to second sale allottee and in the facts of the present case, the proposed treatment of extinguishment of all such unclaimed flats is critical and necessary for due implementation of the approved resolution plan. Insolvency resolution is a time bound process and the parties which has slept over its rights cannot seek admission of its claim in a statutory appeal.

31. The claim of the homebuyers cannot be allowed to jeopardize the progress made till date. The Appellant claims that an allotment letter dated 15.06.2016 was issued by the Corporate Debtor. The possession of the unit was alleged to be handed over to the Appellant in 30 months with an extension of further 6 months. The said period of 36 months expired on 15.06.2019. The Appellant never even once bothered for close to two years to enquire about the status of the flat. Only belatedly on 20.07.2021, the

Appellant filed its claim. The RP had collected all the claims which were submitted while also maintaining a list of units qua which no claims have been received. The claim of the Appellant is not reflected in either of the list.

32. Resolution Professional / Respondent No.1 relies on another judgment of this Tribunal in **“Sanjay Jain v. Nilesh Sharma”, Company Appeal (AT) (Ins) No. 425 of 2021** whereby, similar unauthenticated forged documents were rejected by this Tribunal. This Tribunal after duly going through the documents held that in sum and substance documents which are just signed by two parties i.e. a suspended director and the other being the Appellant cannot be relied upon by the Learned Adjudicating Authority. It was held that the if any party brings on record any forged documents for getting unlawful benefits on the judicial side, it would be appropriate that the proceedings be remitted back to the Adjudicating Authority for exercising its jurisdiction under Section 340 of the Code of Criminal Procedure. Similar, to the present case, the documents referred to in the aforesaid judicial pronouncement bore no signature of any witnesses nor were they part of the records of the company.

33. The commercial wisdom of the CoC cannot be questioned by a disgruntled homebuyer. The CoC in its commercial wisdom approved the resolution plan on 07.05.2021 and the resolution plan provides for specific treatment of belated claims. The Resolution Professional / Respondent No.1 relies upon the judgment of Hon’ble Supreme Court of India in **Jaypee Kensington Boulevard Apartments Welfare Associated & Ors. Vs. NBCC**

(India) Limited & Ors. (2022) 1 SCC 401 which had held that if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors.

34. The Resolution Professional / Respondent No.1 submits that he has duly undertaken its duty under Section 25 of the Code. In compliance with the provisions of the IBC, the RP undertook the process of collation and verification of claims and upon the verification of the books of accounts of the Corporate Debtor duly reflected the unit qua which the claims have been received and units qua which no claims have been received. It is worthy to note that the Answering Respondent has time and again uploaded on the website of the Corporate Debtor on 26.06.2020, Nil date, 29.10.2020, 17.11.2020 the complete list of the allottees, who are yet to file their claim with respect to the flats allotted to them and claims with regard to whom no claim has been admitted. The detailed list uploaded pertains to the name of the allottee, unit number, sale price, amount due, amount received and amount receivable which is exhaustive in itself, thus the allegation of the Appellant that the RP has failed to abide by his duty under Section 25 of the Code, cannot be sustained.

35. Resolution Professional / Respondent No.1 further submits that it has not only relied upon the data obtained from within the premises of the Corporate Debtor but has conducted an exhaustive exercise whereby, with

the help and support of the Resolution Professional of an associate concern of the Corporate Debtor i.e. Indirapuram Habitat Centre Pvt. Ltd, it was able to locate the tally data (on 05.06.2020) and Customer Relationship Management Data (on 21.05.2020) and thereafter revised the claims as to duly comply with the duties bestowed upon him.

36. The judicial pronouncement of '**Arikata Narasa Reddy vs. Venkata Ram Reddy Reddygari & Ors. (2014) 5 SCC 312**', is not applicable to the case herein. The Appellant has failed to make out any case.

37. That the impugned order does not confirm with the law laid down by this Tribunal in '**Puneet Kaur vs. K.V. Developers & Ors. (supra)** Dated 01.06.2022. The Appellant has misinterpreted the decision as laid down by this Appellate Authority in **Puneet Kaur (supra)**.

38. The last date of submission as per Section 15(1)(c) of the Code read with Regulation 6(2)(c) of the CIRP Regulations was 29.10.2019, 90 days from this date of public announcement was over on 13.01.2020 belated claims could be filed in terms of Regulation 12(2) of the CIRP Regulations was 13.01.2020 in the instant case. The Appellant herein filed his claim on 20.07.2021. The IBC is a time bound process and delay on the Appellant's part is of 540 days in terms of Section 15 of the Code and approximately two months after the approval of the plan from the CoC. It makes it clear that the Appellant should not be allowed to reopen this chapter and unleash the hydra headed monster of undecided claims on the Resolution Applicant.

39. Resolution Professional / Respondent No.1 relies upon the law laid down by the Hon'ble Supreme Court of India in "**M/s RPS Infrastructure Ltd. V. Mukul Kumar & Anr**" **Civil Appeal No. 5590 of 2021**, whereby, it has been categorically held that 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 Appellate Tribunal has followed the ratio laid down in M/s RPS Infrastructure (Supra), in a plethora of judicial pronouncements such as "**IDBI Bank Ltd. V. Jalesh Kumar Grover, RP of GPI Textiles, Company Appeal (AT) (Ins) No. 799 of 2023** and "**Millennium Construction Pvt. Ltd. V. Rakesh Kumar Gupta (IRP), Company Appeal (AT) (Ins) No. 1172 of 2023**. Thus, the judicial pronouncements of **Col Sanjeev Dalal Retd Vs M/S International Recreation and Amusement Limited and Dr. Shankar Sawant & Anr v. Arjun Kapoor, Resolution Professional for Monarch Brookfield LLP** duly relied upon by the Appellant is not applicable to the present case.

40. It is noteworthy that the intent of the Code is to inter alia permit a restructuring process, whereby, the liability of a Corporate Debtor could be reset in order to enable a new management to begin on a clean slate for reviving the business of the Corporate Debtor. It is submitted that the Hon'ble Supreme Court in the matter of **Essar Steel v Satish Gupta & Ors, 2019 SCC OnLine SC 1478**, held that:

"88. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the

business of the Corporate Debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.”

41. Further, reliance is being placed upon the law laid down by the Hon’ble Supreme Court of India in the matter of ***Swiss Ribbons v. Union of India & Ors, (2019) 4 SCC 17*** whereby, it has been held that the aim of the Code is to economically rehabilitate the Corporate Debtor and for that purpose, the timelines protect the Corporate Debtor's assets from further dilution. To achieve the said purpose, it is essential that creditors are barred from raising belated claims against the Successfully Resolution Applicant who is trying to resuscitate the Corporate Debtor.

42. The creditors of the Corporate Debtor are supposed to file their claim with Resolution Professional before the last date, as mentioned in the public announcement i.e. 29.10.2019. Thereafter, if any creditor still fails to file its claim with in the stipulated period, the said creditors, in terms of Regulation 12(2) of CIRP Regulations may submit its claim to the Resolution Professional on or before the 90th day of the Insolvency Commencement date i.e. 13.01.2020. If the claim of the Appellant herein was genuine, it could have accepted the claim as per the extended period in terms of Regulation 12(2) of CIRP Regulations till 13.01.2020. Once the extended period also lapses, the Resolution Professional is not empowered to accept such claim and more so, the bifurcation carved out herein by the Appellant herein of being a homebuyer cannot be sustained in view of the directions issued by this Tribunal in judicial pronouncement titled as ***“Mr. Shyam Rathod v. Mr.***

Gopalsamy Ganesh Babu” Company Appeal (AT) (CH) (Ins) No. 137/2023 whereby, a belated claim of 125 days of a home buyer was not allowed and was rejected. Just to reiterate, there stands a delay of more than 550 days in preferring its claim in the instant case.

43. In the matter of **“The Deputy Commissioner Versus Kiran Shah”** Company Appeal (AT) (Insolvency) No. 328 of 2021 NCLAT has held that the literal language of Section 12 of the Code mandates strict adherence to the time frame it lays down.

44. The Appellant was sleeping over his rights and the legal position is well settled that a person who sleeps over his rights ought not be given any indulgence. Close to 3 years had passed since the commencement of CIRP proceedings of the Corporate Debtor and the Appellant never showed any interest with respect to the flat purchased by him. The proceedings under Code are time bound and the belated claim of the Appellant cannot be considered and is liable to be rejected.

45. The claim of the Appellant does not fall within the purview of the directions issued by the Hon’ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 titled “In Re: Cognizance for Extension of limitation”**. The protection with regard to extension of limitation granted by the Hon’ble Supreme Court commences from 15.03.2020 and grants protection to cases only where limitation would have expired during the period of 15.03.2020 till 28.02.2022, which is not the case herein. The time period available with the

Appellants itself expired on 13.01.2020 meaning that the protection granted by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 cannot be relied upon to seek refuge. Reliance is also being placed upon the law laid down by the Hon'ble Supreme Court of India in **“Sagufa Ahmed & Ors v. Upper Assam Plywood Products Pvt. Ltd. & Ors.” in Civil Appeal No. 3007 of 2020** whereby, it has been categorically held is that what was extended by the aforesaid order was only period of limitation and not the period up to which delay can be condoned in exercise of discretion conferred by the statute.

Submissions of the Successful Resolution Applicant (SRA)/Respondent No. 2

46. Successful Resolution Applicant (SRA)/Respondent No 2 is the homebuyer' association and is also the Successful Resolution Applicant in this case. It comprises of over 200 Allottees of (Victory Ace) Project situated in Sector 146, Noida.

47. The Appellant had not submitted a claim on time and only submitted her claim in Form CA on 20.07.2020 i.e. after a delay of 552 days from the last date of submission of claims i.e. 15.01.2020. In I.A. No. 3462 of 2021 before the Adjudicating Authority, the Appellant had sought a direction to the Resolution Professional to admit her belated claim after the approval of the Resolution Plan by the CoC on 09.05.2021. The said I.A. was rightly rejected.

48. Throughout the duration of the CIRP, the office bearers and members of the Successful Resolution Applicant (SRA)/Respondent No 2 made all

possible efforts to give widest coverage to the publication of Form A as also the other steps including submission of claims of homebuyers in the CIRP. The It had created multiple social media pages and accounts, including on X (formerly, Twitter) and Facebook. It also created WhatsApp and Telegram Groups where all information relating to submission of claims, etc. was updated from time to time.

49. The Successful Resolution Applicant (SRA)/Respondent No 2 understands that the Resolution Professional also published the information and updates relating to the CIRP on the internet such that it was widely available to all diligent claimants.

50. As far as the Appellant is concerned, it was in constant contact with her brother-in-law namely Mr. Davender Kumar Gupta. In fact, one of the office bearers of the Answering Respondent namely Mrs. Priya Sharma sent regular communications to Mr. Davender Kumar Gupta on WhatsApp for submission of claim but to no avail. Surprisingly, however, the Appellant chose not to file a claim with the Resolution Professional. The Appellant also admittedly did not inquire about the status/completion of the Project for almost a decade after making the booking.

51. Be that as it may, upon receiving and collating the claims, the IRP constituted the Committee of Creditors (“CoC”). It is pertinent to mention that the Class of Creditors in this case includes 401 claims from Homebuyers-First Sale and 84 claims from Homebuyers-Second Sale. This is because

many flats/units were sold twice over by the erstwhile management of the Corporate Debtor. The promoters/directors of the Corporate Debtor are facing criminal prosecution for their illegal acts and were taken into custody during investigation.

52. The Resolution Professional, upon due verification of the books of accounts of the Corporate Debtor, also published a List of Homebuyers, who have not submitted their claims but whose names are mentioned in the CRM Data of the Corporate Debtor. It is further submitted that the name of the Appellant does not appear in the said List.

53. Thereafter, Form G was published by the Resolution Professional inviting Prospective Resolution Applicants to submit their Expression of Interest and Resolution Plan. However, as a suitable and viable plan was not received in the first round, a fresh Form G was issued by the Resolution Professional, pursuant to which the Answering Respondent submitted its Resolution Plan to protect and further the interests of Homebuyers, without any profit motive or objective. The said Resolution Plan was approved by the CoC in its 11th meeting held on 07.05.2021 (through e-voting concluded on 15.05.2021) with 90.66% votes. The Resolution Plan proposes to deliver completed flats to Homebuyers-First Sale and Second Sale, the latter being adjusted against unclaimed/unsold flats.

54. Further, the Cash Flow Statement forming part of the Resolution Plan shows that the margins available to the Resolution Applicant are very thin,

due to the huge number of claims from Homebuyers-Second Sale who have been adjusted against the unclaimed/unsold inventory, and any further addition to claims will lead to unviability of the approved Resolution Plan and post undue risk and financial burden on those 100s of Homebuyers who have submitted their claims within time.

55. The claims have to be submitted within the timeline and, most certainly, before approval of Resolution Plan by the CoC. This position of law has been established in a recent decision of the Hon'ble Supreme Court of India in ***RPS Infrastructure Ltd. v. Mukul Kumar and Anr., 2023 SCC Online SC 1147*** wherein it has been held that any belated claims would unleash the hydra-headed monster of undecided claims on the the Successful Resolution Applicant.

56. The Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited, Through Authorised Signatory v. Satish Kumar Gupta & Ors., 2020 (8) SCC 531*** had held that a Successful Resolution Applicant cannot suddenly be faced with undecided claims after the Resolution Plan has been accepted.

57. Again, in ***Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Ltd. & Ors, 2021 SCC Online SC 253***, the Hon'ble Supreme Court held belated claims cannot be considered.

58. Reference must also be made to the observations of this Hon'ble Tribunal in ***Harish Polymer Product v. George Samuel, 2021 SCC OnLine***

NCLAT 210 wherein, while rejecting a belated claim from an Operational Creditor pithily explains the risks associated with accepting belated claims when the Resolution Plan is on the verge of approval before the CoC. In the present case, the Resolution Plan has already been approved by the CoC in May 2021 and therefore the above observations assume even greater significance. It is submitted that acceptance of any claim at this stage will entirely upset the approved Resolution Plan and push the Corporate Debtor into liquidation.

59. The reliance placed by the Appellant on this Tribunal's decision in ***Puneet Kaur v. K.V. Developers Private Limited, Company Appeal (AT) (Insolvency) No. 390 of 2022, vide Judgment dated 01.06.2022***, is erroneous and entirely misplaced. The said decision nowhere holds that belated claims of Homebuyers have to be accepted even after approval of the Resolution Plan by the CoC. On the contrary, the said decision also affirms the existing position of law, i.e. belated claims cannot be accepted beyond the deadline prescribed in the IBC. The subsequent directions in Para 27 of ***Puneet Kaur (Supra)***, which have been relied upon by the Appellant herein, were issued in the peculiar facts of that case and do not apply to the present case.

60. Further, even the decision in ***Puneet Kaur (Supra)*** does not lay down any proposition that those homebuyers who have not submitted their claims within time ought to be afforded the same, or similar, treatment as has been given to those homebuyers who had submitted their claims within time and

who were included in the class of creditors. Accepting the Appellant's interpretation will strike at the root of the IBC and will also obviate the need for submitting claims, as homebuyers would then seek the same treatment even without submitting any claim. This will upset the overall scheme of IBC and the purpose behind submission, verification and collation of claims which are strictly regulated by the provisions of IBC.

61. Thus, as also observed in ***Puneet Kaur (supra)***, belated claims from homebuyers cannot be entertained after approval of the Resolution Plan by the CoC. As the Appellant's prayer before the Hon'ble NCLT was for acceptance of belated claim, the same was directly hit by the above exposition of law and thus rightly rejected by the Hon'ble NCLT vide the Impugned Order.

62. In the present case, the CoC and the Resolution Applicant have considered and dealt with those Homebuyers who have not submitted claims, and decided not to entertain their claims belatedly, owing to the peculiar facts of the present case, more specifically the claims from Homebuyers-Second Sale who have been adjusted against unclaimed/unsold flats. The CoC has, thus, exercised its commercial wisdom of not entertaining belated claims from homebuyers in the present case, which is non-justiciable.

63. The above exercise of commercial wisdom by the CoC, besides being non-justiciable, is also in compliance with the provisions of the IBC, which do not provide for any 'minimum payment' to Homebuyers in a CIRP. The provisions of Section 30(2) read with Section 53(1) of IBC also do not come to

the aid of the Appellants. Thus, there being no minimum payment prescribed for the class of creditors i.e. homebuyers under the IBC, the payment of NIL to them is well within the commercial discretion of the CoC.

Appraisal:

64. Heard the counsels of all sides and perused the material placed on record.

65. The primary issue to be addressed concerns the validity of the Home-buyer-Appellant's claim, submitted subsequent to the approval of the Resolution Plan by the CoC but still pending approval with the Adjudicating Authority, within the context of this case. Additionally, it is pertinent to determine whether the evidence provided by the Appellant sufficiently supports their claim.

66. The Appellant claims to have booked a flat/unit in “Victory Ace Social Welfare Society” project of the Corporate Debtor namely, Dream Procon Pvt. Ltd on 15.05.2016. The insolvency proceedings in the case of the Corporate Debtor herein commenced on 06.09.2019. The last date of submission of the claims as per Section 15(1)(c) of the Code read with Regulation 6(2)(c) of the CIRP Regulations was **29.10.2019**. Belated claims could have been filed in terms of Regulation 12(2) of the CIRP Regulations till 15.01.2020.

67. The CoC with 90.66% voting share, in the 11th Meeting of the CoC held on 07.05.2021 (through e-voting concluded on 15.05.2021) concluded its

voting, wherein the Resolution Plan submitted by the Victory Ace Social Welfare Society (SRA) was duly approved by CoC.

68. The Appellant herein filed her claim on **20.07.2021** in Form C after a delay of 552 days from the last date of submission of claims i.e. 15.01.2020.

69. The delay on the Appellant's part in the instant case is of 552 days in terms of Section 15 of the Code and approximately two months after the approval of the plan from the CoC on 07.05.2021.

70. Since the Resolution Plan had already been approved by the CoC on 09.05.2021, the Adjudicating Authority rejected the claim of the Appellant by the impugned order.

71. The Appellant had sought a direction to be given to the Resolution Professional to admit her belated claim vide I.A. No. 3462 of 2021.

72. We now examine settlement of the belated claims – whether they are barred or not in terms of the provisions of IBC and Regulation 12(2) of the CIRP Regulations and also various judicial precedents.

73. The current position of the Regulation 12(2) of the CIRP Regulations is noted herein for better appreciation of the time limits available for filing claims. Prior to the amendment of the CIRP Regulations on 3-7-2018, Regulation 12(2) of the CIRP Regulations permitted the creditors of a Corporate Debtor to submit their claims till the approval of a resolution plan

by the Committee. This has been further modified on 18.09.2023 with another notification which provides that:

“12(1)- Submission of proof of claims: A creditor shall submit a claim with proof on or before the last date mentioned in the public announcement.

Provided that a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, **up to the date of issue of request for resolution plans (“RFRP”) under regulation 36B or ninety days from the insolvency commencement date (“ICD”), whichever is later:**

Provided further that the creditor shall provide reasons for delay in submitting the claim beyond the period of ninety days from the insolvency commencement date”

and 12(2) is deleted and subsumed in 12(1).

74. In the instant case the date of RFRP issue date is prior to the date of COC meeting which has approved the Resolution plan. Even if later date is taken to the advantage of the Appellant as per above provision, which is later than 90 days, it will not help the Appellant due to peculiar facts of the case, where the claim has been filed after the approval of Resolution Plan by the COC.

75. Both sides have filed large number of judicial precedents of the Hon’ble Apex Court and this Tribunal. The important ones and which are relevant for the case are being taken up herein.

76. For condonation of delay in filing the claims, the Appellant has tried to rely upon ***Suo Motu Writ Petition (C) No. 3 of 2020 titled “In Re: Cognizance for Extension of limitation”*** of Hon’ble Apex Court. The

protection with regard to extension of limitation granted by the Hon'ble Supreme Court commences from 15.03.2020 and grants protection to cases only where limitation would have expired during the period of 15.03.2020 till 28.02.2022. In the instant case, the time period available with the Appellants, even after 90 days, expired on 13.01.2020, much before the Covid-19 crises began, meaning that the protection granted by the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No. 3 of 2020* cannot be relied upon to seek refuge. Reliance is also being placed upon the law laid down by the Hon'ble Supreme Court of India in **“Sagufa Ahmed & Ors v. Upper Assam Plywood Products Pvt. Ltd. & Ors.” in Civil Appeal No. 3007 of 2020** whereby, it has been categorically held that what was extended by the aforesaid order was only period of limitation and not the period up to which delay can be condoned in exercise of discretion conferred by the statute. The relevant extracts are as follows:

“...

19. But we do not think that the Appellants can take refuge under the above order. **What was extended by the above order of this Court was only "the period of limitation" and not the period upto which delay can be condoned in exercise of discretion conferred by the statute.** The above order passed by this Court **was intended to benefit vigilant litigants who were prevented due to the pandemic and the lockdown, from initiating proceedings within the period of limitation prescribed by general or special law.** It is needless to point out that the law of limitation finds its root in two latin maxims, one of which is *Vigilantibus Non Dormientibus Jura Subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.

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25. Therefore, the **Appellants cannot claim the benefit of the order passed by this Court on 23.03.2020, for enlarging, even the period up to which delay can be condoned.** The second

contention is thus untenable. Hence the appeals are liable to be dismissed. Accordingly, they are dismissed.
 ...”

[Emphasis supplied]

77. Even the last date to file claims in the extended period was also over prior to his filing of claims, making the applicability of this judgement an impossibility. Therefore, this judgement will not help the case of the Appellant in the instant case.

78. The Appellant claims that extinguishment of the claims shall happen only when the resolution plan has been approved by the Adjudicating Authority. For this, it relies heavily on ***Ghanashyam Mishra and Sons Private Limited (supra)***. The relevant extracts of are as follows:

“...

142. In the result, we answer the questions framed by us as under:

(i) 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;**

(ii) 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect;

(iii) Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval Under Section 31 could be continued.

...”

[Emphasis supplied]

79. The facts of the instant case are distinguishable from the above-mentioned judgment – the claims are belated as also not supported by other material for payments made by the Appellant and also no records of it is present in the book of accounts. The appeal in case of ***Ghanashyam Mishra (supra)*** centres around the basic issue pertaining to binding effect of resolution plan upon the creditor.

80. The issue regarding the belated claims is further enunciated in ***Pratap Technocrats (P) Ltd. vs. Monitoring Committee of Reliance Infratel Limited, 2021 SCC OnLine SC 569***, wherein the Hon'ble Apex Court has concluded that the jurisdiction of the Adjudicating Authority under Section 31(1) is to determine whether the resolution plan, as approved by the CoC, complies with the requirements of Section 30(2). The NCLT is within its jurisdiction in approving a resolution plan which accords with the IBC. There is no equity-based jurisdiction with the NCLT, under the provisions of the IBC. The relevant extracts are as follows:

“...

22. The resolution plan was approved by the CoC, in compliance with the provisions of the IBC. The jurisdiction of the Adjudicating Authority **under Section 31(1) is to determine whether the resolution plan, as approved by the CoC, complies with the requirements of Section 30(2).** The NCLT is within its jurisdiction in approving a resolution plan which accords with the IBC. **There is no equity-based jurisdiction with the NCLT, under the provisions of the IBC.**

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26. The jurisdiction which has been conferred upon the Adjudicating Authority in regard to the approval of a resolution plan is statutorily structured by Sub-section (1) of Section 31. **The jurisdiction is limited to determining whether the requirements which are specified in Sub-section (2) of Section**

30 have been fulfilled. This is a jurisdiction which is statutorily-defined, recognised and conferred, and hence cannot be equated with a jurisdiction in equity, that operates independently of the provisions of the statute. The Adjudicating Authority as a body owing its existence to the statute, must abide by the nature and extent of its jurisdiction as defined in the statute itself.

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42. In the present case, the resolution plan has been duly approved by a requisite majority of the CoC in conformity with Section 30(4). **Whether or not some of the financial creditors were required to be excluded from the CoC is of no consequence, once the plan is approved by a 100 per cent voting share of the CoC.** The jurisdiction of the Adjudicating Authority was confined by the provisions of Section 31(1) to determining whether the requirements of Section 30(2) have been fulfilled in the plan as approved by the CoC. As such, once the requirements of the statute have been duly fulfilled, the decisions of the Adjudicating Authority and the Appellate Authority are in conformity with law.

...

[Emphasis supplied]

81. The Appellant has also tried to rely upon the judgment of Hon'ble Apex Court in ***Jaypee Kensington Boulevard Apartments Welfare Association and Others v. NBCC (India) Limited and Others, (2022) 1 SCC 401***. A three-judge bench of the Hon'ble Supreme Court has rejected the plea of Fixed Deposit Holders for acceptance of belated claims. We note the relevant extract of belated claims as under:

“...

135. In the scheme of the process for corporate insolvency resolution, it is preliminarily provided in Section 13 of the Code that, after admission of an application for corporate insolvency resolution process, the Adjudicating Authority, apart from declaring moratorium and appointing an interim resolution professional, is also required to cause a public announcement of the initiation of CIRP and 'call for submission of claims Under Section 15'. As per Section 15, the material information in the public announcement is to contain, inter alia, 'the last date for submission of claims, as may be specified'. The IRP is enjoined with several duties Under Section 18 and as per Clause (b) thereof, he

is to 'receive and collate all the claims submitted by the creditors to him, pursuant to the public announcement made Under Sections 13 and 15'. CIRP Regulations make the position clearer still, where, by virtue of Regulation 12, a creditor is required to submit his claim with proof 'on or before the last date mentioned in the public announcement'; and a creditor who fails to submit the claim within the stipulated time, may yet submit the claim with proof 'on or before the ninetieth day of the insolvency commencement date'. As per Regulation 13, the resolution professional concerned is to verify the claims within seven days of the last date of receipt of claims.

135.1 Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12. In *Essar Steel* (supra), while dealing with the topic 'Extinguishment of Personal Guarantees and Undecided Claims', this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a fresh plate. This Court, inter alia, held as under:

107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted

to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.

...”

[Emphasis supplied]

82. In the above case the Hon’ble Apex Court has held that a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12A. The judgment is not applicable in the present case as the Appellant has not adhered to the timelines provided in the code and furthermore within the extended time as permitted by Regulation 12A.

83. More recently on 11.09.2023 the Hon’ble Supreme Court of India in **“M/s RPS Infrastructure Ltd. V. Mukul Kumar & Anr” Civil Appeal No. 5590 of 2021**, has held that 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. Relevant extracts are as follows:

“...

19. The second question is whether the delay in the filing of claim by the Appellant ought to have been condoned by Respondent No. 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. The delay on the part of the Appellant is of 287 days. The Appellant is a commercial entity. That they were litigating against the Corporate Debtor is an undoubted fact. We believe that the Appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the Corporate Debtor was undergoing CIRP. The Appellant has been deficient on this aspect.

The result, of course, is that the Appellant to an extent has been left high and dry.

20. Section 15 of the IBC and Regulation 6 of the IBBI Regulations mandate a public announcement of the CIRP through newspapers. This would constitute deemed knowledge on the Appellant. In any case, their plea of not being aware of newspaper pronouncements is not one which should be available to a commercial party.

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 persons who may jump onto the bandwagon. As described above, in Essar Steel,¹ 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.
..."

[Emphasis supplied]

84. Further the said decision cannot be misread to say that the said ratio applies only where the belated claim is filed by a commercial entity; and that if the belated claim is by a non-commercial entity, then the plan can go back and forth and the timelines prescribed in the IBC are no longer sacrosanct. The above ratio of ***RPS Infrastructure (Supra)*** cannot be truncated in its application to cases of belated claims by commercial entities on one hand and non-commercial entities on the other hand, as suggested by the Appellant during the course of hearing.

85. Moreover, the intent of the Code is to, inter alia, permit a restructuring process, whereby, the liability of a Corporate Debtor could be reset in order to enable a new management to begin on a clean slate for reviving the

business of the Corporate Debtor. The Hon'ble Supreme Court in the matter of ***Essar Steel v Satish Gupta & Ors, 2019 SCC OnLine SC 1478***, had held that:

“88. A successful resolution applicant cannot suddenly be faced with “undecided” claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the Corporate Debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, the NCLAT judgment must also be set aside on this count.”

86. Further Hon'ble Supreme Court of India in the matter of ***Swiss Ribbons v. Union of India & Ors, (2019) 4 SCC 17*** has held that the aim of the Code is to economically rehabilitate the Corporate Debtor and for that purpose, the timelines protect the Corporate Debtor's assets from further dilution. To achieve the said purpose, it is essential that creditors are barred from raising belated claims against the Successfully Resolution Applicant who is trying to resuscitate the Corporate Debtor.

87. Now we will see how this issue has been dealt in by this Tribunal in other similar matters.

88. In “***Harish Polymer Product Vs. George Samuel (supra)***” this Tribunal had held that

“...
7. It is pertinent to mention herein that the Resolution Plan has already been received by the CoC as apprised by the RP and it is at the final stage of approval of the CoC (as per RP). At this belated stage, if such types of applications are allowed, the Resolution Plans already received by the CoC from the prospective Resolution Applicants, may get failed, as those are filed on the

basis of Information Memorandum (IM). The prospective Resolution Applicants submitted their Resolution Plan on the basis of their financial capacity and availability of funds. **There is every likelihood that, if the claims of the different creditors are being accepted in a phased manner and/or on such belated stage, that too after the stipulated time, so provided for submitting claims, in that event, the Resolution Plans can never get materialized and there would be no resolution of Corporate Debtor which is main object of the IB Code, more so, when CIRP is to be completed in a time bound manner.** If such claim is accepted, then the Resolution Applicants have to make corrections in their plans that apart, RP has to make corrections in the IM and its report, correction in the stakeholders list, etc., for which RP has to take permission from this Adjudicating Authority, which may further delay the CIRP. Moreover, CIRP cannot be allowed / extended beyond upper limit of 330 days, in that event the corporate debtor would be compelled to go for liquidation. Further, if the resolution Applicants have infused money or have taken financial assistance from other sources, in that event, they will have to approach for enhancement of the loan/ infusion of money, which practically takes a longer time and by the time they would complete all these processes, the period of CIRP will be over, not to speak about further amendment of the Resolution Plan and re- voting thereon by the CoC with requisite percentage. That apart, the asset of the corporate debtor may get deteriorated, which will affect the maximization of the value of the asset of the corporate debtor.

Further, if such a practice is allowed, keeping abeyance the stipulated period, that too after extended time period of 90 days, in that event, it would be difficult to complete the CIRP process, which has to be completed in time bound manner. There may be a number of creditors, who might have filed their claim beyond the prescribed period of 90 days, they may approach before this Adjudicating Authority, citing the example of this case. In that event, even if there is any chance of getting. Resolution Plan(s), the Resolution Applicants may avoid filing the Resolution Plan(s). However, in the instant matter, prospective Resolution Applicant may withdraw himself.

9. It is also pertinent to mention herein that this is not an isolated claim, there is one more application pending for adjudication, who filed its claim before the RP in much belated

stage and now approached this Adjudicating Authority for condonation of delay, when the Resolution Plan is at the verge of approval. If this application is allowed, then, there is every likelihood that the Resolution Applicants may withdraw their plan, as it will be a burden 8 Company Appeal (AT) (Insolvency) No. 420 of 2021 with other huge claims of the creditors, which they might have not planned earlier, while giving the resolution plan based on the IM. Thus, under such situation, the Corporate Debtor may be pushed for liquidation.
 ...”

[Emphasis supplied]

89. The Appellant has also heavily relied on ***Puneet Kaur’s (supra)*** judgment and claims that Resolution Professional was obliged to include the assets and liabilities of the Corporate Debtor and also the liability towards those homebuyers, who have even not filed their claims, in the Information Memorandum. On the other hand the Respondent No.1 / Resolution Professional submits that the Appellant has misinterpreted the decision as laid down by this Tribunal in ***Puneet Kaur’s case (supra)***. Same way Respondent No.2 / Successful Resolution Applicant (SRA) submits that the reliance placed by the Appellant in ***Puneet Kaur’s (supra)*** is erroneous and entirely misplaced. For better appreciation of its applicability for the Appellant or otherwise, we extract here the relevant paras of the Puneet Kaur’s case. They are:

“...
 15. The List of Creditors was already published by Resolution Professional, which did not include the name of the Appellant(s). The Resolution Plan as submitted by Resolution Applicant was based on List of Creditors as published by Resolution Professional. It is true that Homebuyers whose number runs in several hundred in real estate project belong to different class of Financial Creditors. All Homebuyers who have booked a flat may not normally be residing in the area where Corporate Debtor has its corporate office and registered office. The publication in the newspaper is normally done in the area where Corporate Debtor has its registered office and corporate office and there is every likelihood that all Homebuyers could not know within the fourteen days

period allowed in Form-A to file their claim and practically Homebuyers who are hundreds in number neither come to know about the CIRP nor did they file their claim within the fourteen days' time allowed. Even in maximum 90 days period as provided in Section 12(2), on several occasion, Homebuyers could not file their claims. The Homebuyers are a class belonging to middle class of society and majority of whom, who book flat has taken loan from Banks and other financial institutions and they are saddled with liability to pay their loan from their hard-earned income they make payment to the Corporate Debtor in hope of getting a possession of the flat for their residence. **Non-submission of claim within the time prescribed is a common feature in almost all project of real estate. But as law exists today, they cannot be included in the List of Creditors and that too after approval of Plan by CoC. We, thus, do not find any ground to interfere with order of the Adjudicating Authority rejecting their Application for admission of their claim. However, their claims need to be dealt in a manner, which we shall deal in later part of this judgment.**

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17. The Hon'ble Supreme Court in *Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited – (2021) 9 SCC 657* while dealing with the above question, concluded in paragraph 102.1 and held that **once Resolution Plan is approved by the Adjudicating Authority, the claims as provided in the Resolution Plan shall stand frozen and all such claims, which are not part of Resolution Plan shall stand extinguished.** Paragraph 102.1 is as follows:

“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.”

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18. It is thus clear that extinguishment of claim of the Appellant(s) shall happen only after approval of the Plan by the Adjudicating Authority. **The argument of the Respondents that since CoC has approved the Resolution Plan, the claim of the Appellant(s) have been extinguished, cannot be accepted as there is no extinguishment of claim of the Appellant(s) on approval of Plan by the CoC.** Question No.(2) is answered accordingly.

XXX

21. **When the allotment letters have been issued to the**

Homebuyers, payments have been received, there are Homebuyers and there is obligation on the part of real estate Company to provide possession of the houses along with other attached liabilities. The liability towards those Homebuyers, who have not filed their claim exists and required to be included in the Information Memorandum. Further, under Regulation 36, sub-regulation 2(l), there is column for other information, which the Resolution Professional deems relevant to the Committee. The liabilities which have been undertaken by the Corporate Debtor, huge money received by the Corporate Debtor from Homebuyers, whose claims, which could not be filed within time, could not be wished away by the Resolution Professional, on the convenient ground that claims have not been filed by such Homebuyers. The purpose of CIRP of Corporate Debtor is to find out all liabilities of the Corporate Debtor and take steps towards resolution. Unless all liabilities of the Corporate Debtor are not known or included in the Information Memorandum, the occasion to complete the CIRP shall not arise.

XXX

27. 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 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, we are of the view that the claim of those Homebuyers, who could not filed 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 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 Corporate Debtor 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

.....”

[Emphasis supplied]

90. In ***Puneet Kaur (supra)***’s case, the details of homebuyers who had not submitted their claims but whose claims were reflected in the record of the Corporate Debtor, were not provided in the Information Memorandum and thus the Resolution Applicant / Committee of Creditors (CoC) had not the

occasion to consider the same. On the contrary in the present case, the Resolution Professional had duly provided the details of homebuyers, who have not submitted their claims and whose claims were reflected in the record of the Corporate Debtor and the same have been duly considered and dealt with in the approved resolution plan. The Appellant's case is not comparable as the claim was presented much after the approval of the resolution plan and it was not even reflected in the records of the Corporate Debtor. As such, **Puneet Kaur's (supra)** judgment is not squarely applicable and doesn't come to the aid of the Appellant in the instant case.

91. Specifically speaking, in the instant case belated claims have been considered upto 90 days and also of those whose information exists in CRM database, even though they have not filed the claims. The Appellant has filed its claims after 540 days in terms of Section 15 of the Code and approximately two months after the approval of the plan from the CoC on 07.05.2021. The IBC is a time bound process and the Appellant cannot be allowed to reopen this chapter and unleash the hydra headed monster of undecided claims on the Resolution Applicant. Belated claim of the Appellant could not have been accepted by the RP after approval of plan by the Committee of Creditors ("CoC"). Mere non-approval of the Resolution Plan by the Adjudicating Authority cannot form basis for consideration of Appellant's claim. Even otherwise after due approval has been obtained by the CoC, Adjudicating Authority had no scope for substituting any commercial term of the resolution plan as per section 31(1). Appellant, therefore, could not have been allowed by the

Adjudicating Authority as the CoC in its commercial wisdom had approved the resolution plan on 07.05.2021 itself and the said resolution plan provides for specific treatment of belated claims, if any.

92. **Another issue before us in the instant case is, whether basis the materials on record, can we come to a conclusion that the Appellant is a homebuyer or not.** The Appellant claims to have paid a sum of Rs. 50,00,000/- to the ex-management of the Corporate Debtor in 'cash' towards 'total sale consideration' against Flat No. D2-601. The Appellant relies upon a Receipt dated 15.05.2016 purportedly issued by the Corporate Debtor as an acknowledgement of the aforesaid cash transaction. However, the said receipt is not an accounting receipt as it does not bear any serial number, receipt number or diary number and is not accounted for in the books of accounts of the Corporate Debtor. Further, on the same date on which the Allotment Letter dated 15.05.2016 was purportedly issued by the Corporate Debtor to the Appellant, a Buy Back Agreement dated 15.05.2016 has also been executed for repurchase of the Flat by the Corporate Debtor after one year. The said Buy Back Agreement also records that the Appellant would receive assured return on a monthly basis in the nature of interest on the sum advanced. Further, security cheques of Rs. 30,00,000/- and Rs. 20,00,000/- were also apparently issued by the Corporate Debtor to the Appellant for securing the refund of the amount allegedly paid by the Appellant to the Corporate Debtor. It is noted that the alleged agreement dated 15.05.2016, allotment letter dated 15.05.2016 are unilaterally signed

by Sh. Pramod Goel without proper authorization and reflection in the records of the Corporate Debtor. The records show otherwise. In the books of accounts of the Corporate Debtor the alleged unit i.e., D2-601 is registered in the name of one Mr. Ashok Kumar Sharma. This unit stands admitted as a claim in his name. Pertinently, the Allotment Letter and the Buy Back Agreement mention different unit numbers: while the Allotment Letter mentions the unit no. D2-601, the Buy Back Agreement mentions unit no. D2-2002. Further, there is no proof of actual disbursement of the sum of Rs. 50,00,000/- by the Appellant to the Corporate Debtor, such as bank statement, audited accounts, etc. Further, the said payment is not recorded in the Corporate Debtor's books of accounts. All the above facts do not lend credence to the Appellant's assertion that she is a genuine homebuyer. In fact, the Appellant herself filed the Claim in Form-C as a Financial Creditor, and not in Form CA as a Homebuyer. Further, the Appellant's name also does not find mention in the 'List of Homebuyers who have not submitted Claims' published by the Resolution Professional.

93. The Appellant relies on the receipt of Rs.50 lakhs issued on 15.05.2016 issued by one of the Directors of the Corporate Debtor. Since there is no serial number, receipt number or diary number etc. and is also not reflected in the books of the accounts of the Corporate Debtor, it is presumed that this was a cash towards total sale consideration against Flat No. 601 in Tower D2. Since the Appellant has not been able to produce any corroborating material relating to the payment particularly from his Bank records and furthermore

such payment is also not reflected in the books of accounts of the Corporate Debtor, it is difficult to lend any credence to this transaction. Furthermore, perusal of the Buyback Agreement and the allotment letter shows discrepancy, particularly at page 89 of the Appeal Paper Book, wherein in one place flat number mentioned is D2-601 and in another place on the same page, the flat number is mentioned D2-2002. Further the documents referred to herein bear no signature of any witnesses. With such material on record and no details of the payments received for the flat, it is difficult to accept this evidence. The post-dated cheques cannot be a supporting evidence as corresponding payment from the Appellant to the Corporate Debtor is not established.

94. Further in ***“Sanjay Jain v. Nilesch Sharma”, Company Appeal (AT) (Ins) No. 425 of 2021***, similar unauthenticated forged documents were rejected by this Tribunal. It was held that in sum and substance documents which are just signed by two parties i.e. a suspended director and the other being the Appellant cannot be relied upon by the Adjudicating Authority. Also, for this reason, Appellant cannot be protected as per the Doctrine of Indoor Management. Her claims that she is a victim of the fraud committed by the Corporate Debtor and its Directors against her and most of the other allottees and she be not made to suffer is not unsustainable.

95. With respect to the status of Unit No. D2-601, it is claimed by the Appellant that RP has been taking contrary stand. It is claimed that no such submission of its allotment to another person was made before the

Adjudicating Authority, but later on in written submissions – it has been stated that the unit already stands allotted to Mr. Ashok Kumar Sharma, whose claim was filed within time and stands admitted and therefore the said unit could not have been included in the list of unclaimed units. Appellant claims that this is a new pleading which was not their originally and has been raised for the first time in the written submission. It has relied upon judgement of Hon'ble Supreme Court in **'Arikala Narasa Reddy vs. Venkata Ram Reddy Reddygari & Ors.'** (2014) 5 SCC 312, wherein it was held that a party cannot be permitted to travel beyond its pleadings. Relevant part of the judgment has been re-produced as under: -

“9. This Court has consistently held that the court cannot go beyond the pleadings of the parties. The parties have to take proper pleadings and establish by adducing evidence that by a particular irregularity/illegality, the result of the election has been "materially affected". There can be no dispute to the settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”. Thus, a decision of the case should not be based on grounds outside the pleadings of the parties. In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that **no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration.** The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings.”

[Emphasis supplied]

96. In the instant case the status of the allotment of flats is based on the records and data available with the Corporate Debtor, which has been provided by the RP basis the CRM data. Even for arguments sake it is

presumed that the RP had changed its pleading, it does not help the Appellant as per the facts of the instant case wherein the belated claim will not become a claim within the time. This judicial pronouncement of is not applicable to the case herein. The appellant will not get any support basis the judgment quoted by him.

97. The claim that the Corporate Debtor has received benefit from the allotment of the Appellant, which now stands void and in compliance of Section 65 of the Indian Contract Act, 1872, the Respondents are liable to restore the benefit received from the allotment of units is not borne out of the facts of this case. As per the records of the Corporate Debtor, there exists no allotment in the Appellant and nor has any acceptable evidence been produced for the receipt of Rs. 50 Lacs by the Corporate Debtor.

98. The argument of the Appellant that as per the resolution plan for the homebuyers who have submitted their claims at a belated stage, their allotment money deposited has been deemed to be forfeited. Also Clause No.6.6 of the resolution plan titled “extinguishment of rights of Financial Creditors” mentions that any claim that has not been filed or not accepted by the Resolution Professional shall stand extinguished and shall no longer be payable. Even the benefit of “cancellation, termination and forfeiture” clause of the resolution plan entitles refund of 70% to the allottees. And the Resolution plan in its current form unjustly enriches the Respondent No.2 / Successful Resolution Applicant (SRA) in various ways. In the scheme of IBC, the treatment of any debt or asset in a resolution plan is essentially required

to be left to the collective commercial wisdom of the financial creditors. The terms of the resolution plan are discussed and deliberated upon by the COC. In the absence of any legal infirmity in the Resolution Plan, Adjudicating Authority cannot interfere with the commercial aspects of the decision of the COC. The COC in its commercial wisdom approved the resolution plan on 07/05/2021 and the resolution plan provides for specific treatment of belated claims if any. The Clause 6.6 of the resolution cannot be questioned by the Appellant when it has been voted by required majority in the COC. Moreover, the Approved Resolution Plan is a not-for-profit Plan. It is a Plan submitted by the homebuyers, for the homebuyers. No profit whatsoever is sought to be made by the members of Respondent No. 2 by means of implementation of the Plan. The second sale homebuyers have been adjusted against unclaimed and unsold inventory; 84 persons who were in the 'second sale' category of homebuyers have been adjusted against unclaimed and unsold inventory. Thus, only 31 units remain with the Corporate Debtor as unclaimed and unsold units. Accepting belated claims at this stage will upset the financial projections and may cause undue burden on genuine homebuyers who have submitted their claims within time.

99. On the claim of the Appellant that the Resolution Professional has failed to carry out statutory duties as prescribed under Section 25 of the Code.

100. From the materials on record, it is noticed that in compliance with the provisions of IBC, the Resolution Professional has undertaken various activities relating to collation and verification of the claims and upon due

verification of the books of the account of the Corporate Debtor, it duly reflected the units qua which the claims have been received and the units for which claims have been not received. The RP has uploaded the information on the website of the Corporate Debtor on various dates with respect to the complete list of the allottees who are yet to file their claim and with respect to the flats allotted for whom no claim has been admitted. The detailed list had information of the allottees with respect to their names, unit number, sale price, amount due, amount received and amount receivable. The resolution professional has also located the tally data and customer relationship management data (CRM data) not only from the premises of the Corporate Debtor, but also with the help and support of the Resolution Professional of an associate concern of the Corporate Debtor. In these conditions we do not find any substance in the claim of the Appellant that the resolution professional has failed to carry out statutory duties as prescribed under Section 25 of the Code.

101. This Tribunal in **“Mr. Shyam Rathod v. Mr. Gopalsamy Ganesh Babu”** Company Appeal (AT) (CH) (Ins) No. 137/2023 held that a belated claim of 125 days of a home buyer was not allowed and was rejected. Just to reiterate, there stands a delay of more than 552 days in preferring its claim in the instant case. Furthermore, in another matter of **“The Deputy Commissioner Versus Kiran Shah”** Company Appeal (AT) (Insolvency) No. 328 of 2021 NCLAT it was held by this Tribunal that the literal language of

Section 12 of the Code mandates strict adherence to the time frame it lays down.

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.

103. The Appellant was sleeping over his rights. A person who sleeps over his rights ought not be given any indulgence. Close to 3 years had passed since the commencement of CIRP proceedings of the Corporate Debtor and the Appellant never showed any interest with respect to the flat purchased by him. The proceedings under Code are time bound and the belated claim of the Appellant cannot be considered and is liable to be rejected.

Conclusions:

104. Overall, the delay in filing the claim, lack of credible evidence, and inconsistencies undermine the Appellant's case. The Adjudicating Authority's

decision to reject the belated claim is upheld, as it aligns with the time-bound nature of CIRP proceedings and the absence of legal grounds for indulgence.

105. Consequently, the appeal is dismissed, and the Adjudicating Authority's decision stands. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

19th April, 2024

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