

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

**Comp. App. (AT) (Ins) No. 1578 of 2023 & I.A. No. 5688 of 2023**

**IN THE MATTER OF:**

**Rohit Saini**

**...Appellant**

**Versus**

**Sandeep Goel Resolution Professional  
Sarvottam Realcon Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant : Mr. Arsh Bhalla & Mr. Kunal Shahi, Advocates.**

**For Respondent : Mr. Ankur Mittal & Ms. Yashika Sharma, for  
Advocates.  
Mr. Sandeep Goel, for RP.  
Mr. Ritesh Jain, for IRP.**

**O R D E R**  
**(HYBRID MODE)**

**19.03.2024**      **I.A. No. 5688 of 2023**

This application is filed for seeking exemption from filing dim/illegible typed copy in the instant appeal. This application is allowed subject to all just exceptions

**Comp. App. (AT) (Ins) No. 1578 of 2023**

1. This appeal is directed against the order dated 18.10.2023 passed by National Company Law Tribunal, New Delhi Bench, Court -IV (in short '**Adjudicating Authority**') in I.A. (IBC)/ 286/ 2023 IN C.P. (IB) No. 901/ ND/ 2020 by which the application filed by the Appellant under Section

60(5) of the Insolvency and Bankruptcy Code, 2016 (in short '**Code**') r/w Rule 11 of the National Company Law Tribunal Rules, 2016 (in short '**NCLT Rules**') praying for a direction to condone the delay of 544 days in submitting the claim FORM -CA, further seeking a direction to the Resolution Professional/ Respondent to accept the claim of the Applicant as Financial Creditor of a total amount of Rs. 42,39,781/- along with 8% interest and include the name of the Applicant in the list of Financial Creditors and also to direct the Resolution Professional to provide the copy of Agenda and Minutes of all the CoC Meetings of the Corporate Debtor till date has been dismissed.

**2.** Shorn of unnecessary details, the facts of the case are that Suraj Kumar Kaushal & Ors. ('**Homebuyers**') filed an application under Section 7 of the Code against M/s. Sarvottam Realcon Private Limited ('**Corporate Debtor**') before the Adjudicating Authority which was admitted on 09.07.2021 and Sandeep Goel was appointed as the Interim Resolution Professional (in short '**IRP**') who was later on confirmed as the Resolution Professional of the Corporate Debtor.

**3.** The public announcement was made on 14.07.2021 and the last date for submission of claim was 26.07.2021 which was further extended upto 07.10.2021.

**4.** The present Appellant who is also a Homebuyer submitted his claim in Form CA for an amount of Rs. 42,39,781/- along with documents to the

Respondent vide e-mail dated 19.12.2022. There was a delay of 544 days in submitting his claims.

**5.** The Respondent rejected the claim of the Appellant vide e-mail dated 20.12.2022 stating that the time period for the claim has expired.

**6.** The Resolution Plan was submitted by M/s. Anugraham Builders which was approved by the CoC on 24.12.2022.

**7.** The Appellant filed an I.A. (IBC)/286/2023 in which the aforesaid prayers were made. While the said application was pending, I.A. No. 387 of 2023 was filed on 11.01.2023 by the Resolution Professional for approval of the Resolution Plan. It is submitted that arguments in the said application were heard and order was reserved on 14.02.2024 but before that date the application filed by the Appellant was dismissed on 18.10.2023.

**8.** The Tribunal relied upon a decision of the Hon'ble Supreme Court rendered in the case of Civil Appeal No. 5590 of 2021 – **M/s. RPS Infrastructure Limited Vs. Mukul Kumar** decided on 11.09.2023 in which it was 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 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, the Court cautioned*

*against allowing claims after the resolution plan has been accepted by the CoC.”*

**9.** Counsel for the Appellant has submitted that the Tribunal has committed an error in appreciating the facts as well as the judgment in the case of ***M/s. RPS Infrastructure Limited (Supra)*** and submitted that the case of the appellant is rather covered by a three-member bench decision of this Court rendered in the case of ***Puneet Kaur, through her Attorney Amrit Pal Singh V/s. K V Developers Private Limited*** passed in Company Appeal (AT) (Ins.) No. 390 of 2022 decided on 01.06.2022.

**10.** It is submitted that the Learned Tribunal has wrongly recorded that the claim has been set up by the Appellant after the plan was approved by the CoC. It is rather submitted that the claim was submitted on 19.12.2022 which was approved by the CoC five days thereafter on 24.12.2022.

**11.** He has then referred to the facts of the case of ***M/s. RPS Infrastructure Limited (Supra)***. It is contended that in this case the CIRP was initiated on 27.03.2019, public announcement was made on 30.03.2019 and ultimately the CoC approved the Plan on 11.06.2020, whereas the claim was made on 19.08.2020 after the approval of the plan by the CoC, therefore, it is submitted that in that background the Hon'ble Supreme Court has held in Para 21 of the judgment 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”*.

**12.** It is further submitted that this is not the position in the present case rather in the case of **Puneet Kaur (Supra)** the facts were that the Plan was put up for voting in the CoC between 13.06.2021 to 19.06.2021, whereas the claim was filed on 14.06.2021 when the voting was still going on and ultimately the Plan was approved on 20.07.2021.

**13.** It is thus submitted that in the case of **Puneet Kaur (Supra)** the question was framed as to whether after approval of the Resolution Plan on 20.07.2021 by the CoC, the claim of the Appellant(s) stood extinguished?.

This question has been answered by this Court in the following manner

*“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.”*

**14.** Although the Appellant has not impleaded the Successful Resolution Applicant (in short '**SRA**') i.e., M/s. Anugraham Builders as a party in this appeal, yet one of the partners of the said firm, namely, Mr. Ritesh Jain has appeared during the course of hearing and submitted that he has no objection to consider the claim of the Appellant.

**15.** We have heard Counsel for the Parties and perused the record with their able assistance. The very fact that effected party in this case has given a concession in so many words that it has no objection if the claim of the

Appellant is also entertained and the delay in filing the claim is condoned, therefore, we need not to go into the merits of this case and decide the appeal only on the basis of concession made by the Mr. Ritesh Jain.

**16.** Hence, the present appeal succeeds and the Impugned Order is set aside. The Respondent/ Resolution Professional shall now accordingly include the claim of the Appellant and submit the updated claim to the Adjudicating Authority.

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

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

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

*Sim/Ravi*