



**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.3  
**IA/142(MP)2024**  
in  
**C.P.(IB)/56(MP)2021**

**Proceedings under Section 60(5) of IBC, 2016 r.w. Rule 11 of NCLT Rules, 2016**

**IN THE MATTER OF:**

Arvind Pradhan Bhanushali

.....Applicant

V/s

Chaya Gupta, RP of JSM Devcons Pvt Ltd

.....Respondent

**Order delivered on 11/11/2024**

**Coram:**

Chitra Ram Hankare, Hon'ble Member(J)

Kaushalendra Kumar Singh, Hon'ble Member(T)

**PRESENT:**

For the Applicant

:

For the Respondent

:

**ORDER**

**IA/142(MP)2024**

This case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

Sd/-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

*Narendra S. Tomar/Stenographer*

**CHITRA RAM HANKARE**  
**MEMBER (JUDICIAL)**



**THE ADJUDICATING AUTHORITY**  
**NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT INDORE**

**IA/142(MP)2024**

in

**C.P.(IB)/56(MP)2021**

*[An application is filed under Section 60(5) of the IBC, 2016 r.w. Rule 11 of NCLT Rules, 2016]*

**IA/142(MP)2024**

**Mr. Arvind Pradhan Bhanushali**

Flat No. 1305/1306, Cairo Sykline Oasis,  
Premier Road, Vidhya Vihar,  
Ghatkopar (W), Mumbai-400086

**.....Applicant**

**Vs.**

**Ms. Chaya Gupta**

Resolution Professional  
of JSM Devcons India Pvt Ltd  
Reg No. IBBI/IPA-002/IP-N00984/2020-2021/13133  
Add: 1, Bima Nagar, 202, Almas Dreams  
Apartment, Near Anand Bazaar,  
Indore, Madhya Pradesh-452018  
Email- [guptachayacs@gmail.com](mailto:guptachayacs@gmail.com)

**....Respondent**

**In the main matter of: C.P.(IB)/56(MP)2021**

*[An application filed under Section 7 of the Insolvency and Bankruptcy Code, 2016]*

**Motel Rahans Private Limited**

Chatak Arch, F-1, 1<sup>st</sup> Floor, 7 MG Road,  
Indore, Madhya Pradesh-452001

**.....Financial Creditor**

**Vs.**

**JSM Devcons Pvt Ltd**

306, Orbit Mall, Scheme No. 54,  
A.B. Road, Indore-Madhya Pradesh-452001

**.....Corporate Debtor**

**Coram: Mrs. Chitra Ram Hankare, Member (J)**  
**Kaushalendra Kumar Singh, Member (T)**

**Appearance:**

For the Applicant : Ld. PCA Ms. Teena Saraswat Pandey  
(Online) **(IA 142/2024)**

For the Respondent/RP : Ms. Chaya Gupta (Online) (*Erstwhile* RP-in-person)

For the SRA : Ld. Adv. Mr. Ayush J. Rajani (Online)

**Order Pronounced on: 11.11.2024**



## **ORDER**

1. This application is filed by one of the Homebuyers namely, Mr. Arvind Pradhan Bhanushali in the matter of Corporate Insolvency Resolution Process (**'CIRP'**) of JSM Devcons Pvt Ltd [C.P.(IB)/56(MP)2021] seeking direction to the Resolution Professional to accept and admit his claim in totality. This application has been filed on 01.04.2024.

2. It is stated that the applicant had filed his claim in Form CA on 23.02.2024. The Resolution Plan was already approved by the CoC in the months of August, 2023. And as such the claim so made by the applicant is belated one.

2. As stated by the applicant in his application and presented by the learned counsel appearing for him, the applicant had purchased 14 flats in 'Pinnacle D Dreams' projects of the Corporate Debtor JSM Devcons Pvt Ltd and had got a registered agreement to sale dated 19.12.2016. It is submitted that as against the total sale consideration of Rs. 3,25,00,000/-, the applicant had paid an amount of Rs. 71,47,000/- and that as per the said agreement the remaining amount of Rs. 2,53,53,000/- was to be paid by him at the time of execution of sale deed. Further, as regard the payment so made, it is stated that Rs. 25,00,000/- was transferred to the Corporate Debtor's account by RTGS on 02.06.2014 whereas the balance of Rs. 46,47,000/- was transferred by RTGS on 09.06.2014. As regards the payment of Rs. 25,00,000/- so made on 02.06.2014, it has been further clarified that Mr. Vinod Bhanushali had transferred through RTGS an amount of Rs. 51,64,000/- out of which Rs. 25,00,000/- was on behalf of applicant for purchase of the flat.

3. As regards his claim being belated one, it is submitted by the applicant that he being the resident of Mumbai was not aware of the initiation of the CIRP against the Corporate Debtor and, therefore, could not file his claim timely with the RP; and that immediately upon knowledge of the same, he filed his claim to the RP on 23.02.2024 but he did not receive any response thereon from the RP. It is also submitted that having paid the amount of Rs. 71,47,000/- as stated in the agreement towards the purchase of said 14 flats,



he followed up regularly but due to absconding of the Directors since July, 2017, the sale-deed could not be executed as per the agreement, despite his willingness to pay balance consideration. The applicant has placed his reliance on the judgment passed by Hon'ble NCLAT New Delhi Bench in the matter of Puneet Kaur Vs. KV Developers Private Limited [Company Appeal (AT) (Insolvency) No. 390 of 2022] saying that his claim was reflected in the records of the Corporate Debtor, as the payment was made through banking channel and as such the RP was under obligation to include his claim in the Information Memorandum on her own so that the Resolution Applicant could have taken note of the said liabilities and should have dealt appropriately in the Resolution Plan. It is submitted that non consideration of such claims, which are reflected from records leads to unequitable and unfair resolution.

4. The Respondent/RP has filed the reply and the same is placed on record. The RP objected to allowing any such relief sought by the applicant on the ground that the Resolution Plan had already been approved by the CoC in the months of August, 2023 and following detailed hearing in the matter of Resolution Plan (IA No. 54 of 2023), the order was reserved on 16.02.2024 and thereafter the Resolution Plan was approved by the Adjudicating Authority *vide* order dated 05.04.2024; and as such the claim being belated one could not be admitted at this stage. On the day of the hearing the learned counsel for the SRA also appeared and submitted that it was a belated claim made on 23.02.2024 by the applicant before the RP, as such the SRA cannot be burdened by accepting such belated claims.

5. We have heard the learned PCA, Ms. Teena Saraswat Pandey appearing for the Applicant as well as learned counsel, Mr. Ayush J. Rajani for the SRA. We have also taken note of the detailed reply filed by the RP. The facts of the matter and the objection taken by the RP is summarized hereunder: -

- (i) The Corporate Debtor was admitted in CIRP *vide* order dated 17.03.2022 and Mr. Sanjay Kumar Singh was appointed as the Interim Resolution Professional (IRP). The IRP in compliance of IBBI Regulation made public announcement under Form-A on 31.03.2022. Another



public notice was issued on 12.06.2022 calling upon the claimants of the Corporate Debtor to submit their claim.

(ii) The *Erstwhile* IRP was replaced by the respondent who was appointed as the Resolution Professional *vide* order dated 03.11.2022.

(iii) Immediately after her appointment, the respondent through her legal counsel had provided proper intimation about the initiation of CIRP and imposition of moratorium in terms of section 14 of the Code, across all the courts, forum and tribunals where the Respondent had knowledge/information about the pending litigations against the Corporate Debtor. Not only this, the Respondent herself vide email dated 23.01.2023 had intimated the Hon'ble Secretary of RERA, Madhya Pradesh about initiation of CIRP against the Corporate Debtor and about her appointment as a Resolution Professional.

(iv) Furthermore, in terms of Regulation 36(A)(1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the *Erstwhile* RP had invited for expression of interest by publishing Form G on 05.08.2022. And thereafter, respondent also published the revised Form G on 19.01.2023 in the Local Newspaper inviting expression of interest for the Corporate Debtor. M/s Devvrat Developers Pvt Ltd has been declared as Prospective Resolution Applicant and then its Plan has been approved in the 12<sup>th</sup> meeting by way of e-voting and an application being IA No. 254 of 2023 was filed before this Hon'ble Tribunal for its approval. The order in the said application was reserved on 16.02.2024, and pronounced on 05.04.2024, approving the Resolution Plan. It is also pertinent to mention herein that an article has been published in DB Star, Dainik Bhaskar, Indore on 23.06.2023 stating that M/s Devvrat Developers Pvt Ltd has submitted its Resolution Plan for completion of project Pinnacle D Dreams.

(v) The Applicant herein has admittedly submitted that he had initiated proceeding before RERA, Madhya Pradesh ("RERA") being



Complaint No.M-IND-19-0728 which was pending adjudication. Evidently, the Applicant did not follow up and/or acted diligently in following the proceedings pending before the RERA 'as the Applicant did not bother to enquire about the status of its own litigation which is pending since 2018/19.

In other words, had the Applicant acted even with minimal diligence in following up its matter before RERA then the Applicant would be aware about the ongoing CIRP proceeding against the Corporate Debtor as the Respondent herein vide email dated 23.01.2023 has already intimated RERA about the CIRP of Corporate Debtor.

(vi) The respondent had also placed notices and banners at the project site at a conspicuous place so that anyone who is visiting the property site will be aware about the initiation of CIRP against the Corporate Debtor and if required would file a claim and/ or approach the Respondent querying about the further course of action. Further, the Respondent through Notices dated 09.12.2022 and 24.01.2023 sent to the Pinnacle Residential Co-operative Society, called for meetings in order to verify the legitimacy of ownership of the flats occupied and the venue of the said meeting was society main gate, Pinnacle D Dreams, Indore i.e., the project site. It is submitted that the meeting held on 11.12.2022 was attended by 23 members and by 8 members on 28.01.2023. Accordingly, if the Applicant was diligent enough about his claim over the flat(s), he must have visited the project site at least once in past two years, then would have got knowledge about the commencement of CIRP against the Corporate Debtor.

(vii) Importantly, the Applicant nowhere in the Application has stated as to when and how he got the knowledge about CIRP of Corporate Debtor at this stage, and how come he did not have knowledge about the CIRP of Corporate Debtor although similarly situated persons filed their claim. The content of the Applicant verbalizes an authoritative



averment stating that the Respondent is bound by all means to admit the claim of the Applicant although filed belatedly.

(viii) The reliance placed by the Applicant on the judgment of Puneet Kaur Vs. KV Developers Pvt Ltd [Company Appeal (AT)(Ins.) No.390 / 2022] is distinguishable in facts as in the matter of Puneet Kaur, the name of the claimants thereof were reflected in the records of the Corporate Debtor whereas in the present case, no records *qua* any claimants was available with the respondent nor the name of the applicant reflected in the books of account.

(ix) Further, contrary to what has been averred by the Applicant, the law *qua* acceptance / admission of the claim has been well settled by the Hon'ble Supreme Court as well as Hon'ble NCLAT in catena of judgments. The issue is no more *res integra* and the Hon'ble Supreme Court in the case of M/s RPS Infrastructure Ltd. v. Mukul Kumar & Anr. [ Civil Appeal No. 5590 of 2021, decided on 11.09.2023] has categorically held that claim(s) cannot be admitted once the Resolution Plan has been approved by the CoC, although it is pending before the Adjudicating Authority for its approval, and the mere fact that the Adjudicating Authority has yet to approve the Resolution Plan does not mean that the Resolution Plan can go back and forth, as that would result in reopening of the whole issue wherein other similar persons may also come up with the belated claim making the CIRP an endless process.

6. The RP has also submitted that in this case out of 14 units that are claimed by the applicant 10 units have been claimed by other claimants, all of whom timely submitted her claim and were thus duly admitted, therefore the Applicant seem to have been defrauded by the ex-management of the Corporate Debtor, however, the probability of the applicant's claim itself being fraudulent cannot be ruled out. In any case, there cannot be any justification for negligence of the Applicant in view of various judgments of Hon'ble Supreme Court and NCLAT, which are binding in nature. The already claimed units (by other claimants) are as follows-



SI No.	Unit No.	Name of Prior Claimant
1.	PT 7-1406	Prafull Jain
2.	PT 7-1209	
3.	PT 7-1106	Prafull Jain
4.	PT 7-1005	Harish Chhabra
5.	PT 7-201	Prafull Jain
6.	PT 7-606	Prafull Jain
7.	PT 7-605	Prafull Jain
8.	PT 7-404	Pradeep Gupta
9.	PT 7-1503	
10.	PT 7-1604	Prafull Jain
11.	PT 7-1605-	Archana Jain
12.	PT-8-805	Chetan Talati
13.	PT 7-104	
14.	PT 8-1203	

7. The RP has also placed reliance onto the following decisions: -

(i) Order dated 09.02.2024 passed in IA 63 of 2024 by this Adjudicating Authority (NCLT Indore Bench) in Shikha Jain Vs. Chaya Gupta, RP of JSM Devcons Pvt Ltd whereby belatedly filed claim was rejected on the very grounds that the SRA cannot be burdened with the unknown claims.

(ii) Orders dated 28.08.2023 and 15.03.2022 of the Principal Bench in the matter of Dialmer Financial Services Pvt. Ltd. Vs. Value Infracon India Pvt. Ltd. [CP(IB) No.22 (PB)/2018], whereby similar prayers of homebuyers who filed their claim belatedly, were rejected.

(iii) The judgment dated 19.04.2024 of Hon'ble NCLAT in Company Appeal (AT) (INS) 1511 of 2023 in the case of Pooja Mehra Vs. Nilesh Sharma & Ors, which is a detailed judgment covering all aspects of the belated claims.

(iv) The decision of Hon'ble Supreme Court in the case of M/s RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr. [Civil Appeal No. 5590 of






2021, decided on 11.09.2023] wherein it is held that claims cannot be admitted once the Resolution Plan has been approved by the CoC.

8. We have taken note of the decisions as relied upon by the Applicant as well as Respondent/RP. We find that the decision of Hon'ble NCLAT in the case of Puneet Kaur Vs. KV Developers Pvt Ltd is distinguishable as in that case the name of the claimants thereof was reflected in the records of the Corporate Debtor whereas in the present case, no records qua any claimants was available with Respondent/RP, nor the name of the applicant is reflected in the books of accounts as being the homebuyer. Merely because the payment made by the applicant may appear in the bank statement, RP could not be expected to infer that the nature of such payment was towards purchase of Flat and ascertain therewith the name of such homebuyer and, therefore, the RP cannot be expected to include name of such homebuyers who did not file the claim as required under the extant regulations. We further note that in the matter of **M/s RPS Infrastructure Ltd. Vs. Mukul Kumar & Anr (supra)** the Hon'ble Supreme Court has held that claims cannot be admitted once the Resolution Plan has been approved by the CoC although it is pending before the Adjudicating Authority for its approval, and the mere fact that the Adjudicating Authority has yet to approve the Resolution Plan does not mean that the Resolution Plan can go back and forth, and if that is allowed then there are chances wherein other similar persons also come up with the belated claim making the CIRP an endless process. For ready reference the relevant paragraphs of the judgment are reproduced hereunder:- "...

*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, 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 hydraheaded monster of undecided claims on the resolution applicant. ...”

9. In the present case we find that RP had taken all due steps to ensure that the claimants are informed of the initiation of the CIRP. Apart from the public announcement in the newspaper, she had also placed banners at the site of the project. She has included the claims of all those persons who filed their Form No. CA till two days prior to the date on which the CoC voted for approval of the Resolution Plan. In all there are claims of 351 homebuyers which are included in the process. It is not understood as to how the applicant



has not been aware of the CIRP proceedings. If he has slept over all that period, then for that reason the Resolution Plan cannot go back and forth with. In the context, the observation made by the Hon'ble NCLAT in para 103 of the decision dated 19.04.2024 in the case of **Pooja Mehra Vs. Nilesh Sharma (supra)** is reproduced hereunder: -

*“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”.*

Further in the present case the RP had also intimated the RERA. Had the applicant followed up his complaint in RERA and enquired of the status, he could have come to know from there also about the initiation of the CIRP. The CoC in its own wisdom have approved the Resolution Plan which was submitted by the Resolution Applicant based upon the data available in the Information Memorandum. Keeping in view the position of the allotments/sale of flats, the payments made and the position of the vacant flats, the Resolution Applicant had come up with its Resolution Plan. The Successful Resolution Applicant ('SRA') even accepted the claim included by the RP that were received till two days prior to putting up the Resolution Plan for voting. Therefore, at this stage, Successful Resolution Applicant cannot be burdened further on account of such belated claims. The application filed by the applicant is dismissed.

10. Accordingly, **IA/142(MP)2024** stands **dismissed**.

Sd/-

**KAUSHALENDRA KUMAR SINGH**  
**MEMBER (TECHNICAL)**

*Narendra S. Tomar/Stenographer*

Sd/-

**CHITRA RAM HANKARE**  
**MEMBER (JUDICIAL)**