

July 2024

## National Company Law Appellate Tribunal rejects delayed homebuyer's claim

The Principal Bench of the National Company Law Appellate Tribunal, New Delhi (“NCLAT”) in the case of **Pooja Mehra v Nilesh Sharma (RP for Dream Procon Pvt. Ltd.)**<sup>1</sup>, while examining the validity of the appellant homebuyers' claim, dismissed an appeal for condonation of delay of 552 (five hundred and fifty-two) days in filing a claim against the corporate debtor.

The NCLAT, while dismissing the appeal, *inter alia*, emphasized that the objective of the Insolvency and Bankruptcy Code 2016 (“IBC”) is to economically rehabilitate the corporate debtor. To fulfil this objective, it is crucial to adhere to the time frame laid down in IBC to prevent creditors from bringing up delayed claims against a successful resolution applicant.

### Brief Facts

The Appellant No. 1, Pooja Mehra (“Homebuyer”), allegedly booked a flat/unit in Victory Ace Social Welfare Society, a project of Dream Procon Pvt. Ltd. (“Corporate Debtor”). The Corporate Debtor issued an allotment letter on May 15, 2016, allocating Unit No. D2-106 (“Unit”) to the Homebuyer.

Simultaneously, the Homebuyer and the Corporate Debtor entered into a Buy Back Agreement (“BBA”) also dated May 15, 2016. According to the terms of the BBA, the Corporate Debtor assured monthly monetary returns, against which post-dated cheques were issued to the Homebuyer. The BBA also stipulated that the Homebuyer would have the right to cancel the booking after expiry of 1 (one) year from the date of the agreement and the Homebuyer would be entitled to refund of the sale consideration.

However, the Corporate Debtor failed to deliver possession of the Unit within the stipulated timeframe and defaulted on the monthly assured returns. Additionally, the Corporate Debtor did not execute the buy-back of the Unit as per the Agreement.

On June 6, 2019, the Adjudicating Authority admitted an insolvency petition against the Corporate Debtor and an Interim Resolution Professional (“IRP”) was appointed.

The IRP invited claims from all creditors through an advertisement in Form A, dated October 17, 2019, published on October 18, 2019. The deadline for claim submissions was October 29, 2019, with the 90 (ninety) day maximum period stipulated under IBC expiring on January 15, 2020.

Subsequently, on January 16, 2020, Mr. Nilesh Sharma was appointed as the Resolution Professional (“RP”).

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<sup>1</sup> Company Appeal (AT)(Insolvency) No. 1511 of 2023

The Committee of Creditors (“**CoC**”) approved the resolution plan of Respondent No. 2, the Successful Resolution Applicant, Victory Ace Social Welfare Society (“**SRA**”), on May 7, 2021.

On July 20, 2021, the Appellant submitted her claim to the RP, with a delay of 552 (five hundred and fifty-two) days. At this stage, although the resolution plan had been approved by the CoC, approval was pending from the Adjudicating Authority. The RP neither accepted nor rejected the claim of the homebuyers.

Thereafter, the appellants filed an application before the Adjudicating Authority under Section 60 (5) of IBC read with Rule 11 of the National Company Law Tribunal (“**NCLT**”) Rules, 2016, seeking condonation of delay in filing the claim and directions against the RP to include their claim in the list of homebuyers.

The Adjudicating Authority dismissed the application through an Order dated August 11, 2023 (“**Impugned Order**”). An appeal was filed against the said impugned Order before the NCLAT.

## Issues

The primary issue to be decided by the NCLAT was validity of the homebuyer’s claims, submitted after the approval of the resolution plan by the CoC and pending approval from the Adjudicating Authority.

Additionally, the NCLAT examined whether the evidence provided by the Homebuyer was sufficient to support the Homebuyer’s claim.

## Decision

On the first issue, taking note of the facts leading to filing of the appeal, the NCLAT noted that there was a delay of 552 (five hundred and fifty-two) days in filing the claim by the appellant. In this context, NCLAT examined the scheme of IBC in relation to settlement of delayed claims.

NCLAT rejected the appellant’s contention in relation to condonation of delay. Firstly, it was observed that the order of the Supreme Court of India (“**Supreme Court**”) in *In Re: Cognizance for Extension of Limitation*<sup>2</sup>, only provides protection in cases where limitation would have expired between March 15, 2020, and February 28, 2022 (“**Supreme Court Order**”). Noting that in the present case the time period available expired on January 13, 2020, it was observed that the Supreme Court Order would have no application. Further, relying on *Sagufa Ahmed v. Upper Assam Plywood Products*<sup>3</sup>, it was observed that the extension granted by the Supreme Court Order pertained to extension of limitation period and not duration for which delay could be condoned at the discretion conferred by the statute.

In relation to the appellant’s contention that the extinguishment of claims will happen only when resolution plan has been approved by the Adjudicating Authority, following the decision in *M/s RPS Infrastructure Ltd. v. V. Mukul & Anr*<sup>4</sup>, it was held that the absence of approval from the Adjudicating Authority does not imply a perpetual oscillation of the plan, thus, safeguarding corporate insolvency resolution process (“**CIRP**”) from becoming an interminable endeavour.

NCLAT, following the law laid down in *Essar Steel v Satish Gupta & Ors*<sup>5</sup> and *Swiss Ribbons v Union of India & Ors*<sup>6</sup> noted that the aim of IBC is to economically rehabilitate the corporate debtor and for that purpose, timelines prescribed protect the corporate debtor’s asset from further dilution for which, it is necessary that creditors are barred from raising delayed claims against the SRA.

<sup>2</sup> *Cognizance for Extension of Limitation, In re*, (2020) 19 SCC 10.

<sup>3</sup> *Sagufa Ahmed v. Upper Assam Plywood Products (P) Ltd.*, (2021) 2 SCC 317.

<sup>4</sup> *RPS Infrastructure Ltd. v. Mukul Kumar*, (2023) 10 SCC 718.

<sup>5</sup> *Essar Steel v Satish Kumar Gupta & Ors*, (2019) SCC OnLine SC 1478.

<sup>6</sup> *Swiss Ribbons v. Union of India & Ors*, (2019) 4 SCC 17.

Reliance was also placed on the decisions in *Shyam Rathod v. Gopalsamy Ganesh Babu*<sup>7</sup> and *Deputy Commissioner v. Kiran Shah*<sup>8</sup> wherein it has been recognized that the adherence to the strict timelines is mandatory and delayed claims were rejected.

In this background, NCLAT held that the delayed claim of the appellant could not have been accepted by the RP after approval of the resolution plan by the CoC and mere non-approval of the plan by the Adjudicating Authority cannot form a basis for consideration of the appellant's claim. Further, it was held that the Adjudicating Authority had no scope for substituting commercial terms of the approved resolution plan as per Section 31(1) of IBC. In the present case, Clause 6.6 of the approved resolution plan provided specific treatment of delayed claim and the same could not be substituted. It was further noted that permitting delayed claims at this juncture could disrupt financial forecasts and potentially impose undue burdens on legitimate homebuyers who adhered to the stipulated timeline for claim submission.

On the second issue, NCLAT on examination of the documents submitted by the appellant in support of the transaction between the appellant and the Corporate Debtor, noted that the receipt of the transaction relied on by the appellant did not bear any serial number and was not accounted for in the books of the Corporate Debtor. Further, no proof of actual disbursement was found. Additionally, it was noted that the Unit in question was registered in the name of one Mr. Ashok Kumar Sharma, whose claim has been admitted as a homebuyer. Upon considering these aspects, it was held that the appellant could not be considered a genuine homebuyer. NCLAT in this regard, relied on the decision in *Sanjay Jain v. Nilesh Sharma*<sup>9</sup> wherein unauthenticated forged documents were rejected.

## Conclusion

NCLAT, in upholding the decision of the NCLT, has reaffirmed the time-bound nature of the CIRP process and the intent of IBC which aim to promote the economic rehabilitation of a corporate debtor. The decision also comes as relief to successful resolution applicants, who often face delays or disruptions due to delayed claims, which can hinder the implementation of an approved resolution plan.

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<sup>7</sup> *Shyam Rathod v. Gopalsamy Ganesh Babu*, 2023 SCC OnLine NCLAT 1701.

<sup>8</sup> *Company Appeal (AT) (Insolvency) No. 328 of 2021*.

<sup>9</sup> *Sanjay Jain v. Nilesh Sharma*, 2021 SCC OnLine NCLAT 3492.

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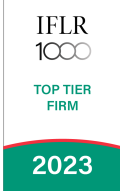




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