NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1976 of 2026

IN THE MATTER OF:

CS Vekas Kumar Garg Resolution
Professional of Jaipuria Buildcon Private Limited ...Appellant(s)

Versus

Vijay Kumar Saxena ...Respondent(s)

Present:

For Appellant(s) : Mr. Vipul Pankaj Sanghi and Ms. Anshika Verma, Advocates.

For Respondent(s) : Mr. Adhish Srivastava, Mr. Arjun Maheshwari, Advocates.

O R D E R
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellant before this Tribunal is the Resolution Professional, who is aggrieved by the impugned order dated 28.07.2026, which has been passed by the Ld. NCLT, Principal Bench, New Delhi, on I.A. No. 3476/PB/2025, as preferred in CP (IB) No. 48 (PB) of 2020.

2. The consequential effect of the impugned order had been that the Ld. Tribunal, while deciding I.A. No. 3476/2025 along with other pending interlocutory applications had disposed of the application directing, that the Applicant to the I.A., who happens to be genuine buyer and an allottee in the project namely “Jaipuria Apartment, Crossing Republik, Ghaziabad”, they may be granted liberty to raise their claim to be considered in accordance with law.

3. The Ld. Tribunal taking into consideration of the fact, that the Applicants, who are the home buyers and are shown to have paid 90% of

the sale consideration and because of the fact that no notices were issued and they were not even made aware, as regards to the process of inviting claims and thus the bonafide mistakes occurred, and is because of lack of knowledge on the part of the Applicant homebuyers, who could not approach before the RP by filing of an application within an appropriate time.

4. If the application itself is taken into consideration, the Respondent pleaded, that upon booking of flat, and that allotment letter, that was issued in his favour on 28.01.2014 and consequently, the Applicant to the I.A. was allotted with Flat No. A-302, measuring 1550 square feet, for a total sale consideration of Rs. 45,83,750/-. It's not even that upon the said allotment, being made on 28.01.2014, the Corporate Debtor, vide its allotment letter had also undertaken the task to deliver the possession of the flat to the Applicant as agreed, on or before 31.07.2014. Thus, ever since then its alleged that they are in possession of the allotted flat.

5. It is contended by the Applicant/Respondent herein, that the Corporate Debtor had extended an assurance under the binding terms of Tripartite Agreement dated 28.01.2014, which was executed for the purpose of sanctioning of the housing loan amount with the Financial Creditor, i.e. the Syndicate Bank, which was sanctioned on 01.03.2014. The Appellant contends, that as per the break-up of the payment schedule given in the application, he had remitted an amount as per the chart given to the said application and the total remittance therein has been shown to be Rs.

41,25,375/- and the said fact of remittance of the amount is also a fact which is shown to be reflected in the balance sheet and the Bank Statement, which acknowledges the payment made by the Applicant/Respondent.

6. Despite of having accepted the major amount of the sale consideration, the construction was not completed, due to which the Applicant alleges to have visited the office of the Corporate Debtor, for the purposes of ensuring the completion of the construction. Since there was no positive response, he had filed a complaint before the UP RERA against the act and in action of Corporate Debtor and thereafter, the applicant also became a decree holder when UP RERA, *vide* its Judgement dated 14.09.2020, had directed the Corporate Debtor to refund the amount, that was received from the Applicant along with interest payable on it. When the same was not complied with, a recovery certificate was issued dated 30.12.2022 for an amount of Rs. 71,67,509/- that was made payable along with interest on it @ 8.30% w.e.f. 20.12.2022.

7. Despite of the issuance of the recovery certificate dated 20.12.2022, and because there being no challenge given by the Corporate Debtor to the Judgment dated 14.09.2020, that was rendered by the UP RERA and also because of the fact that there was no response received by the Applicant from the District Magistrate, Ghaziabad, and the Corporate Debtor, he filed a complaint before the Hon'ble Chief Minister on 08.06.2025, which was responded to the Appellant, by the reply of 16.06.2025 received from the Tehsildar, Ghaziabad. In response to the said complaint, its only then, did

the Applicant come to know about the pendency of Insolvency proceedings and hence, it is contended by the Applicant, that since the knowledge of the Insolvency proceedings was attributed to her at a later stage only upon receipt of the response from the office of Tehsildar, being received from the office of Uttar Pradesh, Chief Minister Complaint Redressal Sale.

8. The Applicant then only, had sought to move an application raising a claim in the form of CA on 20.06.2025, without verifying the fact and reason of delay that had occurred in preferring the claim on 20.06.2025. The RP refused to accept the claim vide its email communication dated 07.07.2025. The Applicant's claim is that the delay is bonafide, as since he was not aware of the CIRP proceedings and the knowledge of it has been attributed, only after the response received through Tehsildar upon a complaint made to the Chief Minister. Hence, the rejection of the claim would be bad in the eyes of law.

9. It's a case of the Applicant that in accordance with Regulation-8A of the CIRP Regulation, 2016, submission of the claim by the class of Creditors was required a prescription under law that a person claiming to be a creditor shall submit his claim with the proof to the IRP in an electronic form thus, because Regulation-12 since provides the submission of proof of claim and sub-Regulation-2 of Regulation-12, where the creditor was required to submit the proof of claim on or before the last date mentioned in the public announcement. So, in light of Regulation-12, which has to be rationally read with Regulation-14, the claim by the Appellant is prayed, that it ought not

to have been rejected because of the fact that the no information as required to be furnished under Regulation-6A was ever submitted to the Appellant and thus, the entire manner in which the proceedings have been taken was bad in the eyes of law, and in derogation of principles of natural justice.

10. Hence, in the application thus preferred by the Applicant, she prayed for condonation of the delay of **1114 days**, in filing claim Form CA, in view of the reasons that have been stated in the application and prayed to admit the claim of the Applicant. The said prayer sought in the I.A. was allowed by the impugned order, wherein the Ld. Tribunal, while recording its findings in the context of the pleadings raised in the application, observed that the delay that has occurred on part of the Applicant was genuine for the reasons given therein because they didn't had the knowledge of the proceedings, coupled of the fact that they were the decree holder by the Judgment of the RERA, hence, the Ld. Tribunal while condoning the delay had directed the RP to consider the claim of the Applicant in accordance with law. In relation to it, to justify the reasoning for condoning the delay, the Ld. Tribunal observed that as per the Judgment of this Tribunal in ***'IDBI Trusteeship Services Ltd. Vs. Shree Vardhman Infraheights Pvt. Ltd.'***, a delay, if any, in filing of the claim has to be reasonably considered and it should not be rejected merely on the ground of the technicities. Thus, the Tribunal condoned the delay, as against which the Appellant/RP is before us.

11. After having heard the Ld. Counsel for the parties and after going through the reasons which have been taken by the Applicant in the

application, supporting the claim based on RERA decree of 14.09.2020 which have already been discussed above, we are of the view that for the purpose of considering the claim in the shape of Form-CA, a rational view has to be taken, so far as it relates to the aspect of the condonation of delay, more particularly when the rigour of delay it cannot be directly attributed to the Applicant not because for his lack of diligence, when he has established under fact to not to be instrumental in filing a belated claim. And also because of the fact that, in accordance with the documents those have been placed on record, it affirms that in fact no notices were issued to the Respondent as mandated under Regulation-6A, hence the entire proceedings qua the Respondent/Applicant, would be vitiated and they may not be made to suffer, because of legal and procedural flaw on part of the appellant because it would result in complete deprivation of an opportunity to the Applicant/Respondent to raise his contentions qua the claim which would be in derogation to principles of natural justice and contrary to decree too, as records itself speaks that the amount admittedly stand established to have been remitted by the Applicant to the developer and as such the claim was required to be considered in accordance with law, under the settled canons of law.

12. When the detail particulars supplied by RP, of the Appellant were not provided under the Information Memorandum and it apparently happens to be in violation of Regulation-6A, the direction given by the Ld. Tribunal for considering the bonafides of the Respondent and holding the

Respondent/Applicant to be bonafide homebuyer and consequently issuing directions to consider the claim after condonation of the delay, is well within the framework of the law laid down, particularly the course that while considering the application for claim filed by the Respondents or any other such claimants, a rational view has to be taken to render justice, particularly in the context of the claim supported by decree raised when it comes to the aspect of condonation of delay.

13. As per the law, the RP was bound under law, even before the Regulations came into force, i.e. even before the introduction of Regulation-6A under Section 18(b) read with Regulation 36(2), that the homebuyers' claims should be reflected in the record and must be dealt with in the plan. According to the Judgment reported in '***State Tax Officer v. Rainbow Papers Ltd. [(2023) 9 SCC 545]***', relevant paras are extracted hereunder: -

> *"22. Prior to amendment by Notification No. IBBI/2018-2019/GN/REG013 dated 3-7-2018, with effect from 4-7-2018, sub-regulation (1) of Regulation 12 read with sub-regulation (2) provided that a creditor shall submit proof of claim on or before the last date mentioned in the public announcement, Sub-regulation (2) was amended with effect from 4-7-2018 and now reads "a creditor shall submit claim with proof on or before the last date mentioned in the public announcement".*
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> *23. The Regulations have to be read as a whole and not in a truncated manner and interpreted in the light of the statutory provisions of IBC, as interpreted by this Court. This Court has time and again held that the timelines stipulated in IBC even for completion of proceedings are directory and not mandatory.*

29. As argued by the learned Solicitor General, the term "secured creditor" as defined under IBC is comprehensive and wide enough to cover all types of security interests, namely, the right, title, interest or a claim to property, created in favour of, or provided for a secured creditor by a transaction, which secures payment or performance of an obligation and includes mortgage. charge, hypothecation, assignment and encumbrance or any other agreement or arrangement securing payment or performance of any obligation of any person.

46. Under Section 31 IBC, a resolution plan as approved by the Committee of Creditors under sub-section (4) of Section 30 might be approved by the adjudicating authority only if the adjudicating authority is satisfied that the resolution plan as approved by the Committee of Creditors meets the requirements as referred to in sub-section (2) of Section 30 IBC. The condition precedent for approval of a resolution plan is that the resolution plan should meet the requirements of sub-section (2) of Section 30 IBC.

50. Ordinarily, the use of the word "shall connotes a mandate/binding direction, while use of the expression "may" connotes discretion. If statute says, a person may do a thing, he may also not do that thing. Even if Section 31(2) is construed to confer discretionary power on the adjudicating authority to reject a resolution plan, it has to be kept in mind that discretionary power cannot be exercised arbitrarily, whimsically or without proper application of mind to the facts and circumstances which require discretion to be exercised one way or the other.

51. If the established facts and circumstances require discretion to be exercised in a particular way, discretion has to be exercised in that way. If a resolution plan is ex facie not in conformity with law and/or the provisions of IBC and/or the Rules and Regulations framed thereunder, the Resolution would have to be rejected. It is also a well-settled principle of interpretation that the

expression "may", if circumstances so demand can be construed as "shall".”

14. It is prescribed therein that the liability of the homebuyers who are genuine purchasers, if it is evident and could be apparently captured from the records then the RP was bound to consider the same as per the law and that has been laid down by the Judgment of ***‘Puneet Kaur Vs. K.V. Developers as reported in 2022 SCC Online NCLAT 245’***, relevant paras are extracted hereunder: -

“15. The list of creditors was already published by the resolution professional, which did not include the name of the appellant(s). The resolution plan as submitted by the 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 the corporate debtor has its corporate office and registered office. The publication in the newspaper is normally done in the area where the 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 corporate insolvency resolution process 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 the committee of creditors. 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.

Question No. (2)

19. We have noticed above that in the event a claim belatedly filed by a homebuyer is not accepted to be taken up, such homebuyer cannot be included in the list of creditors as prepared under the CIRP Regulations. The case of homebuyers has been now recognised as financial creditors under the provisions of the Code as amended by Act 26 of 2018 (with retrospective effect from June 6, 2018). The amendment in Code was brought to mitigate the misery of homebuyers and to give them participation in the corporate insolvency resolution process of a real estate company. Looking to the procedure as is prevalent regarding filing of the claim by the financial creditors, large number of homebuyers are unable to file their claim within the time due to various genuine reasons related to such homebuyers. Homebuyers make payment to the corporate debtor, receive allotment letter from the corporate debtor and also enter into builder buyers agreement. All the documents pertaining to homebuyers are on the record of the corporate debtor and interim resolution professional/resolution professional does take charge also of all the records of the corporate debtor. Even though, the interim resolution professional/resolution professional are not obliged to include the name of such homebuyers, who have not filed the claim within the time in their list of creditors, but there is no reason for not collating the claims of such homebuyers whose claims

are reflected from the records of the corporate debtor, including their payments and allotment. Regulation 36 of the CIRP Regulations as amended with effect from July 4, 2018 provides:

"36. Information memorandum.-(1) Subject to sub-regulation

(4), the resolution professional shall submit the information memorandum in electronic form to-

(a) each member of the committee within two weeks of his appointment as the resolution professional; and

(b) to each prospective resolution applicant latest by the date of invitation of the resolution plan under clause (h) of sub-section (2) of section 25 of the Code.

(2) The information memorandum shall contain the following details of the corporate debtor-

(a) assets and liabilities with such description, as on the insolvency commencement date, as are generally necessary for ascertaining their values.

Explanation. 'Description' includes the details such as date of acquisition, cost of acquisition, remaining useful life, identification number, depreciation charged, book value, and any other relevant details.

(b) the latest annual financial statements;

(c) audited financial statements of the corporate debtor for the last two financial years and provisional financial statements for the current financial year made up to a date not earlier than fourteen days from the date of the application;

(d) a list of creditors containing the names of creditors, the amounts claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims;

(e) particulars of a debt due from or to the corporate debtor with respect to related parties;

(f) details of guarantees that have been given in relation to the debts of the corporate debtor by other persons, specifying which of the guarantors is a related party;

(g) the names and addresses of the members or partners holding at least one per cent. stake in the corporate debtor along with the size of stake;

(h) details of all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities;
(i) the number of workers and employees and liabilities of the corporate debtor towards them;....
(1) other information, which the resolution professional deems relevant to the committee.

20. There are two important provisions of regulation 36. Regulation 36(2)(a) and 36(2)(1) Regulation 36(2) oblige the resolution professional to include the details of the corporate debtor regarding assets and liabilities. The word "liabilities" is an expensive word. The "liability" has been defined in P. Ramanatha Aiyar-Advanced Law Lexicon in following words:
"The term 'liability means a liability to pay money or money's worth and it includes any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution. ((English) Insolvency Act, 1986, section 382(4) as cited in Chitty on Contracts, 27th Edition, 1994 Volume I, c. 20, paragraphs 20 to 37, page 1015)

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(1), 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 the corporate insolvency resolution process of

the 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 corporate insolvency resolution process shall not arise.

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, the resolution plan as submitted by the resolution applicant cannot be faulted. However, we are of the view that the claim of those homebuyers, who could not file their claims, but whose claims were reflected in the record of the corporate debtor, ought to have been included in the information memorandum and resolution applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the resolution plan. Non-consideration of such claims, which are reflected 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 the 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 the resolution applicant shall prepare an addendum to the resolution plan, which may be placed before the committee of creditors for consideration. The above exercise be completed within a period of three months from today and the addendum along with minutes of the committee of creditors be placed before the Adjudicating Authority at the time of approval of the resolution plan, which is pending consideration before the Adjudicating Authority. The resolution applicant may also bring into the notice of the Adjudicating Authority the order of this date, so that

the Adjudicating Authority may await the addendum and minutes of the committee of creditors, which may be considered along with approval of the resolution plan. We thus, dispose of these appeal(s) with following directions:
(1) The resolution professional shall provide all details of homebuyers along with their claims as reflected from the record of the corporate debtor, who had not filed their claims, including the appellant(s) to the resolution applicant within a period of one month from today.
(2) The resolution applicant shall prepare an addendum on the basis of information as submitted by the resolution professional and place the same before the committee of creditors within a further period of one month.
(3) The committee of creditors shall consider the addendum in its meeting and decision of the committee of creditors on the information memorandum and addendum be placed before the Adjudicating Authority. The committee of creditors shall take decision in its meeting within a period of one month from the date of submission of addendum by the resolution applicant.
(4) The Adjudicating Authority while considering approval of the resolution plan, which is pending consideration in I.A. No. 3447 of 2021 shall consider the addendum and the minutes of the committee of creditors at the time of finalising the resolution plan."

15. So far as the consequences flowing from Regulation 13(1C)(b)(ii), we are of the view that, looking to the ratio laid down in the Judgment of Rainbow Papers (supra), it does prescribe that the Adjudicating Authority does have the power to condone the delay and the claim cannot be extinguished, as the concept of extinguishment of the claim can be only on the approval by the Adjudicating Authority, and because of the fact that the RERA decree holders remain in the category of homebuyers, their claim ought and was bound to be considered on its own merits.

16. After having considered the application and the finding recorded by the Ld. Tribunal of condoning the delay and remitting the matter back to the RP to consider the application in Form-CA for the claim to be raised by the Respondent/Applicant, the same is absolutely justified in the eyes of law. Hence, we do not find any reason to interfere in this Appeal, the Company Appeal since lacks merit, the same is accordingly **dismissed**.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

New Delhi.
26 Nov, 2026.
Abhishek Pandey