

(2024) 02 NCLAT CK 0027

National Company Law Appellate Tribunal New Delhi

Case No: Company Appeal (AT) (Insolvency) No. 832 Of 2022

Ranju Kumari & Anr

APPELLANT

Vs

Value Infracon India Private
Limited & Ors

RESPONDENT

Date of Decision: Feb. 9, 2024

Hon'ble Judges: Ashok Bhushan, Chairperson; Barun Mitra, Member (T)

Bench: Division Bench

Advocate: Divyanshu Rai, Vishal Sharma, Taruna, Dacchita Shahi, Neeraj Kr. Gupta, Kunal Godhwani

Final Decision: Dismissed

Judgement

Ashok Bhushan, J.

1. This Appeal has been filed against the order dated 28.04.2022 passed by National Company Law Tribunal, Principal Bench at New Delhi, by which order Adjudicating Authority approved the Resolution Plan submitted by Respondent No.1.
2. We by our order of the date passed in **Company Appeal (AT) (Insolvency) No. 654 of 2022 – Paridhi Finvest Pvt. Ltd. vs. Value Infracon Buyers Association and Anr.** has already upheld the order passed by the Adjudicating Authority.
3. The Appellants' claim in this Appeal is that the Appellants, who were allotted a unit by the Corporate Debtor in September 2011 and have also made payments to the extent of Rs.23,54,675/-, but could not file their claim in the Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor and the Appellants came to know about the order dated 28.04.2022 only in May 2022 and they filed their claim in Form-CA only on 09.06.2022.

4. Learned Counsel for the Appellants submit that the Appellants being unaware of the CIRP, could not file their claim and Resolution Professional ("RP") was obliged to reflect the amount paid by the Appellants in the Information Memorandum. The Information Memorandum did not contain any details regarding the unit of the Appellants. As per the judgment of this Tribunal in **Puneet Kaur Vs. K V Developers Pvt. Ltd.**, the RP was obliged to refer to the amount received by the Corporate Debtor.

5. The learned Counsel appearing for RP as well as Successful Resolution Applicant ("SRA") refuting the submissions of learned Counsel for the Appellant submit that the Appellants having not filed their claim up to the date when the Resolution Plan was approved by the Adjudicating Authority, all claims which did not find part of the Resolution Plan stand extinguished in view of the judgment of the Hon'ble Supreme Court in **Ghanshyam Mishra and Sons vs. Edelweiss Asset Reconstruction Co. Ltd. - (2021) 9 SCC 657**, hence, no relief can be granted to the Appellants. The Successful Resolution Applicant has also adopted the submissions of the RP and submits that there is no merit in the Appeal filed by the Appellant.

6. We have considered the submissions of learned Counsel for the parties and have perused the record.

7. Admittedly, the Appellants have filed their claim belatedly. In paragraph 21 of the Appeal, the Appellants themselves have pleaded that they could know about the CIRP and approval of the Plan in May 2022 and could file the claim only on 09.06.2022. Paragraph 21 and 22 of the Appeal are as follows:

"21. That on 21.05.2022, the Appellants came across a news article online on "Ghaziabad 365", which stated that the Hon'ble Tribunal has approved for "Meadows Vista" to completed by the home-buyers. This is the first time the Appellants got to know about the CIRP of the Corporate Debtor and the ensuing litigation. The Appellants immediately made efforts to obtain any other information on the subject and it is then that they found out about the impugned order. A true copy of the article dated 21.05.2022 published on Ghaziabad 365 regarding Meadows Vista is annexed herewith as Annexure A-13.

22. That on 09.06.2022, the Appellants filed a Claim with the Resolution Professional in terms of Form- CA under Regulation 8A of the CIRP Regulations, 2016 for Principal amount of Rs 24,02,705/- along with interest @18% per annum till the date of commencement of insolvency, i.e., 04.05.2018, i.e., for a total amount of Rs. 50,43,837/- A true copy of the communication to the Resolution Professional with Form-CA (without enclosures) dated 09.06.2022 is annexed herewith as Annexure A-14."

8. No claim having been filed till the approval of the Resolution Plan, we are unable to grant any relief to the Appellants in the present Appeal. The impugned order passed by the Adjudicating Authority has already been upheld by us. It is pleaded on behalf of the RP that the Promoters of the Corporate Debtor has abandoned the project and no records were available and whatever records could be collected from the Flat Buyers, on that basis the Information Memorandum was prepared. The Plan having already been approved by the Adjudicating Authority, no new claim can be admitted.

9. We, however are of the view that the dismissal of the Appeal shall not preclude the Appellants to approach the Successful Resolution Applicant and to give details of payments given to the Corporate Debtor and it is for the Successful Resolution Applicant to take a call on the said claim.

10. Two Intervention Applications have also been filed in this Appeal being IA Nos.519 of 2023 and 520 of 2023. We having taken the view that no relief can be granted to the Appellants in this Appeal, the Intervention Applications are also rejected.

11. We, thus, dismiss the Appeal with the aforesaid observation and liberty. No order as to costs.