NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

COMPANY APPEAL (AT)(INSOLVENCY) NO.837/2026

(*Arising out of judgement and order dated 10.03.2026 passed by the National Company Law Tribunal, New Delhi in IA(Co.Act)407/2025 in Tp(Co Act)55/PB/2022 Old CP No.989/2015*)

In the matter of:

M/s Creative Thinks Media Pvt Ltd
Through its Director Ms Satvinder Kaur
Having its office at
6th Floor, Unit No.603, Corporate Park Tower A,
Ploat No.7A/1, Near Advant Building Sector 142
Gautam Buddha Nagar, Noida
Uttar Pradesh 201305 **Appellant**

Vs

Mr Shailendra Singh
Resolution Professional for
Shubhkamna Buildwell and Estates Pvt Ltd
J-16 Second Floor, Jangpura Extension,
New Delhi 110014 **Respondent**

For Appellant: Mr. Saurabh Jain, Mr. Suresh Chandra Sharma, Mr Prayag Jain, Mr Himanshu Shukla, Advocates.

For Respondent: Mr Abhishek Anand, Mr Karan Kohli, Ms Palak Kalia, Advocates.

ORDER
HYBRID MODE

10.07.2026: This appeal arises out of an order dated 10.03.2026 passed by the Ld. NCLT, New Delhi in *IA (Co.Act)407/2025*, which IA was filed under Rule *11* of the NCLT Rules, 2016 read with Section 60(5) of the IBC, seeking condonation of delay in filing the claim by the Appellant with the Resolution Professional and also seeking a direction against the Resolution Professional as a Financial

Creditor to receive, verify and admit the appellant's claim as a Financial Creditor in a Class.

2. It is the submission of the learned counsel for the appellant, the appellant had rendered advertisement services to the Corporate Debtor and raised a tax invoice dated *30.09.2014*. The payment against the said invoice was not made and hence subsequently a residential flat bearing No.*T-3/B-802* in the project "Subhkamna –EPIC" was allotted to the Appellant and the Appellant paid the sale consideration in the form of amount under the Tax Invoice way back in the year 2015.

3. The allotment letter dated *18.03.2015* was issued by the Corporate Debtor in favour of the Appelalnt. The Builder Buyer Agreement was executed between the Appellant and Corporate Debtor. The flat has since been recorded in the name of the Appellant in the Corporate Debtor's record.

4. Admittedly CIRP was initiated against the Corporate Debtor on *25.04.2023* and that the appellant submitted its claim as a Financial Creditor on *10.06.2025*, with a delay of approximately *676* days. The Resolution Professional declined to admit the claim on the ground of delay since the last date of submission of claim was 24.07.2023 and further as the Committee of Creditors had already approved the Resolution Plan on *18.01.2024* with the requisite majority.

5. The main gamut of argument raised by learned counsel for the appellant is while dismissing the IA No.*407/2025*, vide the same impugned order, another similar application for condoning a delay of *672* days was allowed by the Ld. NCLT.

6. It is the submission of the Learned counsel for the appellant the reasons for not condoning the delay of the appellant were perverse and no distinction ought to have been made between a commercial firm filing a claim or an individual allottee, as has been made by the Ld. NCLT, *vide* the impugned order.

7. The learned counsel for the appellant tried to distinguish the case of *RPS Infrastructure Ltd Vs Mukul Kumar & Anr 2023 SCC OnLine SC 1147* on the ground the parties in such case were in litigation and it was rather the reason, the delay was not condoned but whereas parties in the present case were never in litigation and rather the appellant was never aware of the initiation of CIRP of the Corporate Debtor, hence there was a delay. It was argued the distinction made by the Ld. NCLT between the applicants of IA *407/2025* as well as IA No.*408/2025* was wholly incorrect.

8. We have heard the arguments advanced by the learned counsels and have also perused the material on record. This issue has already been decided by this Tribunal in *Company Appeal (AT) (Insolvency) No.1944/2025 in L&L Partners Litigation Vs Jalesh Kumar Grover* as under: -

> *7.From the facts which has been brought on the record it is clear that claim was filed by the appellant vide letter dated 08.01.2025 claiming the allotment from AKME Projects Limited of 3 units G-601, G-701 & G-801 in AKME Raga total consideration for allotment is Rs.2,44,08,565/- which* ***allotment was towards adjustment of bills of the appellant firm towards legal fee****. The RP after receiving of the claim sent his reply by email 13.02.2025, which has been brought on the record by appellant itself at Page 354 to 356 of the appeal paper book. Claim was not admitted both on the ground of filing delay as well as on merits. The reply of the RP mentioned that name of the appellant is not included in the list of 221 allottees which are part of the order of District Magistrate*

dated 10.11.2025. CIRP was initiated by the homebuyers for not honouring the liabilities as per District Magistrate order dated 10.11.2025, hence the claim of the appellant cannot be dealt with in the CIRP of the corporate debtor.

8.Coming to the submission of the appellant that adjudicating authority committed error in not condoning the delay, we need to notice the reasons given by adjudicating authority in not accepting the claim of the appellant. Reliance on the judgment of this Tribunal in 'Puneet Kaur' (supra) was also considered. Adjudicating authority observed that judgment of 'Puneet Kaur' (supra) was with respect to plight of the poor homebuyers and cannot be taken benefit by firm as the appellant. It was also noticed by the adjudicating authority that plan has already been approved by the Committee of Creditors (CoC) and is under consideration before the adjudicating authority. This Tribunal in 'Puneet Kaur' (supra) had observed that when records of the corporate debtor reflect the payments made by homebuyer to the corporate debtor, it is the obligation of the RP to collate such claims irrespective of the fact whether claim has been filed by the homebuyer or not. The present is a case where adjudicating authority has returned a finding that claim of the appellant was not reflected in the record of the corporate debtor, appellant thus cannot claim any benefit of the judgement of 'Puneet Kaur' (supra) in the facts of the present case.

10.The reasons given by the adjudicating authority in refusing to condone the delay in filing the claim by the appellant a legal firm cannot be said to arbitrary or without any basis. Admittedly, the resolution plan was approved by the CoC much before filing of the claim by the appellant and plan is pending consideration before the adjudicating authority. Judgment of the Hon'ble Supreme Court in 'RPS Infrastructure Ltd.' (supra) was also case where claim of a commercial entity was under consideration. Appellant is a legal firm which cannot place on the same footing as homebuyers of a residential unit, whose case was under consideration in 'Puneet Kaur' (supra).

11.We thus are of the view that no error has been committed by the adjudicating authority in refusing to condone the delay in filing the claim by the appellant, resolution plan having already approved and pending consideration before the adjudicating authority.

17.Learned counsel for the respondent has raised one more submission to support his case. It is submitted that allotment *which is claimed by the appellant is in lieu of legal fee which was to be received from AKME Projects Limited and AKME Projects Limited has made allotment to the appellant in lieu of legal fee, no disbursement was made by the appellant in favour of the corporate debtor. It is submitted that appellant is not a financial creditor. Reliance has been placed on the judgment of this Tribunal in 'M/s. Propertree Real Estate Solutions Pvt. Ltd.' (supra), where this Tribunal in paragraph 37 laid down following:*

> *"37. A significant aspect of the matter which may also be highlighted is that for the Builder Buyer Agreement executed allegedly for allotment of two flats nothing was paid by the appellant and only the due amount of brokerage has been shown as outstanding in MoU of 25.11.2021 as amended by MoU dated 03.02.2022 as consideration of these two flats. Thus no money in fact, was paid or disbursed by the appellant to the CD as a consideration of the two flats stated to be allotted under the agreement dated 25.11.2021 as amended on 03.02.2022. Thus it is a case where absolutely no disbursement of amount, which may have commercial effect of borrowing and there appears no raising of any amount from alleged allottee (appellants)."*

18.Hon'ble Supreme Court has occasion to consider the definition of the financial creditor given in Section 5(8) of the IBC. Hon'ble Supreme Court has laid down that disbursement for time value of money is pre-condition for accepting any debt as a financial debt. We may refer to the judgment of the Hon'ble Supreme Court in 'Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited' Vs. 'Axis Bank Ltd. & Ors.' reported in [(2020) 8 SCC 401], where in paragraph 46, Hon'ble Supreme Court laid down following:

> *"46. Applying the aforementioned fundamental principles to the definition occurring in Section 5(8) of the Code, we have not an iota of doubt that for a debt to become "financial debt" for the purpose of Part II of the Code, the basic elements are that it ought to be a disbursal against the consideration for time value of money. It may include any of the methods for raising money or incurring liability by the modes prescribed in clauses (a) to (f) of Section 5(8); it may also include any derivative transaction or counter-indemnity obligation as per clauses (g) and (h) of Section 5(8); and it may also be the amount of any liability in respect of any of the*

guarantee or indemnity for any of the items referred to in clauses (a) to (h). The requirement of existence of a debt, which is disbursed against the consideration for the time value of money, in our view, remains an essential part even in respect of any of the transactions/dealings stated in clauses (a) to (i) of Section 5(8), even if it is not necessarily stated therein. In any case, the definition, by its very frame, cannot be read so expansive, rather infinitely wide, that the root requirements of "disbursement" against "the consideration for the time value of money" could be forsaken in the manner that any transaction could stand alone to become a financial debt. In other words, any of the transactions stated in the said clauses (a) to (i) of Section 5(8) would be falling within the ambit of "financial debt" only if it carries the essential elements stated in the principal clause or at least has the features which could be traced to such essential elements in the principal clause. In yet other words, the essential element of disbursal, and that too against the consideration for time value of money, needs to be found in the genesis of any debt before it may be treated as "financial debt" within the meaning of Section 5(8) of the Code. This debt may be of any nature but a part of it is always required to be carrying, or corresponding to, or at least having some traces of disbursal against consideration for the time value of money."

19. By explanation added in Section 5(8) of the Code by Second Amendment Act, 2018, any amount raised from an allottee under a Real Estate Project has been deemed to be an amount having commercial effect of borrowing. The explanation is as follows:

"Explanation.- For the purposes of this sub-clause,-

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;"

20. Amount raised from allottees under Real Estate Project has been deemed to be an amount having the commercial effect of borrowing. Thus, when an amount is raised from allottees by a Real Estate Builder, the said amount becomes financial debt.

> *Present is not a case where any disbursement was made by the appellant in favour of the corporate debtor. In view of the law laid down by the Hon'ble Supreme Court in paragraph 46 of 'Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited' (supra), as above, the claim of the appellant is not covered under the definition of a financial debt.*

9. In the present case admittedly, no disbursement was made by the appellant against the consideration for the time value of money. Admittedly the flat was allotted to compensate the appellant for the amount it had spent on advertisement as per its invoice, hence on similar logic as of *L & L Partners Litigation* (supra), the appellant can neither be treated as a financial creditor, nor would its debt be a financial debt. Thus, we are in no hesitation to say that we are not inclined to interfere in the impugned order. Accordingly, the appeal is dismissed.

9. Pending applications, i.e. I.A. No. 3313, 3424 & 3750 of 2026 are also disposed of.

(Justice Yogesh Khanna)
Officiating Chairperson

(Mr Barun Mitra)
Member (Technical)

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