

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 227
(IB)-1416(ND)2019

**IA/2067/2021, IA/2068/2021, I.A2205/2021, IA/875/2021,
IA/5615/2020, IA/5630/2020, IA/3049/2020, IA/3122/2020,
IA/3628/2020, IA/4128/2020, IA/3436/2020, IA/1272/2021 &
IA/1295/2021**

IN THE MATTER OF:

Vijaya Purohit

...

Applicant/Petitioner

Versus

M/s. Trading Engineers (International) Ltd

...

Respondent

Under Section: 9 of IBC Code, 2016

Order delivered on 26.07.2021

CORAM:

**SHRI. ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)**

PRESENT: - Adv. Sumit Bindal for Applicants, Mr. Palzer Moktan, Adv. for Applicant, Mr. Ashish Makhija, Ms. Richa Singh, Ms. Akanksha Vasudeva and Mr. Sidharth Banthia - Adv. Counsels for RP, Mr. Anuj Kr. Pandey

ORDER

The case was taken up on urgent mentioning by the Counsel for RP.

IA/5615/2020: None appeared for the Applicant. Ld. Counsel appearing for the RP submits that CIRP has already expired. Hence, the prayer made in the Application has become infructuous.

Accordingly, the IA is Dismissed being Infructuous.

IA/5630/2020: Ld. Counsel appearing for the Applicant submits that this Application has become infructuous.

Accordingly, the IA is Dismissed being Infructuous.

IA/3049/2020: Ld. Counsel appearing for the SBI seeks permission to file the reply. On her request, one more opportunity is given to file the reply



List the matter on 09.09.2021.

IA/3122/2020: None appeared for the applicant. On perusal of the averments made in the Application, we notice that by filing this Application the Applicant has prayed for listing of IA/1489/2019 for an early hearing. Since, the matter pertains to the release of salary and wages of the workmen, therefore, list this IA/1489/2019 on 06.08.2021.

IA/3628/2020: By filing this Application, the Applicant has prayed for condonation of the delay of 336 days in filing the claim with the Resolution Professional. Heard the Ld. Counsel for the Applicant and perused the averments made in the Application.

Ld. Counsel for the Applicant, in the course of hearing submits that the claim was submitted before approval of Resolution Plan by the COC but after the Information Memorandum. The Resolution Plan has already been approved by CoC, so the delay may be condoned.

Before considering the submissions, at this juncture, we would like to refer to the decision of Hon'ble Supreme Court in the matter of Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. Supreme Court [Civil Appeal No.8766-67/2019 and other petitions] ("Essar Case") 2019 SCC Online SC 1478 in which the Hon'ble Supreme Court held that:

"a successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who successfully take over the business of the corporate debtor" and it was further held that ***"All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor."***

Further, The Hon'ble Supreme Court in Jaypee Kensington Boulevard Apartments Welfare Association &Ors. Vs. NBCC (India) Ltd. &Ors. Civil Appeal No. 3395 of 2020, decided on 24.3.2021, again considered this issues and in para 135, 135.1, 135.2 and 136 held that :-



“135. In the scheme of the process for corporate insolvency resolution, it is preliminarily provided in Section 13 of the Code that, after admission of an application for corporate insolvency resolution process, the Adjudicating Authority, apart from declaring moratorium and appointing an interim resolution professional, is also required to cause a public announcement of the initiation of CIRP and call for submission of claims under Section 15. As per Section 15, the material information in the public announcement is to contain, inter alia, the last date for submission of claims, as may be specified. The IRP is enjoined with several duties under Section 18 and as per clause (b) thereof, he is to receive and collate all the claims submitted by the creditors to him, pursuant to the public announcement made under sections 13 and 15. CIRP Regulations make the position clearer still, where, by virtue of Regulation 12, a creditor is required to submit his claim with proof on or before the last date mentioned in the public announcement; and a creditor who fails to submit the claim within the stipulated time, may yet submit the claim with proof on or before the ninetieth day of the insolvency commencement date. As per Regulation 13, the resolution professional concerned is to verify the claims within seven days of the last date of receipt of claims.

135.1. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant as also of the Committee of Creditors. In the very scheme of the



corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12. In Essar Steel (supra), while dealing with the topic Extinguishment of Personal Guarantees and Undecided Claims, this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a fresh plate. This Court, inter alia, held as under: -

107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be



submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.

135.2. It has not been the case of anyone that in the process in question, any of the requirements of Sections 13, 15 and 18 had not been complied with. It has also not been any bodys case that any claim made by any fixed deposit holder within the stipulated time was not taken into account by IRP.

136. In the given fact situation and in view of the law declared by this Court, we find no justification for the directions contained in paragraph 125 of the order passed by NCLT. Those directions are required to be annulled.

Point F Objections of the financial creditor of subsidiary of the corporate debtor.”

On the basis of the decisions referred (Supra) we observe that the Hon'ble Supreme Court in Jaypee case reiterated in the decision of Essar Case held that the claim, which is not submitted within the stipulated period cannot be taken into consideration.

In the light of the aforesaid decisions, now we consider the prayer of the applicant. It is seen that the applicant has prayed for condonation of the delay of 336 days in filing the claim, whereas the maximum period provided for completion of the CIR Process is 330 days. This shows that the Applicant has prayed for condonation of delay in filing the claim for a period more than the period prescribed for completion of CIRP. Since the Resolution Plan during the pendency of this application has already been approved by the COC and



pending before the Adjudicating Authority, in view of the decisions referred (Supra), we are of the considered view that the prayer of the applicant is not liable to be accepted. Hence prayer to condone the delay in filing the claim is hereby rejected. However, the Applicant is at liberty to raise the claim before the Resolution Applicant, if any provision is made in the Resolution Plan.

With this, the IA stands Dismissed.

IA/4128/2020 & IA/3436/2020: Ld. Counsel appearing for the RP submits that since the CIRP has already expired, both these Applications have become infructuous.

Considering the submissions, **both the IAs are Dismissed being infructuous.**

IA/1272/2021: Mr. Ashish Makhija appearing for the RP accepts the notice. Therefore, there is no need to issue notice upon Respondent. The Applicant is directed to serve the copy of the Application on the email ID of the RP. RP is directed to file reply within a week from today.

List the matter on 09.09.2021.

IA/1295/2021: By filing this Application, RP has prayed for an early listing of the IA/875/2021. Since, the matter has already been listed today, the present IA has become Infructuous.

Accordingly, the IA is Dismissed being Infructuous.

IA/2067/2021, IA/2068/2021, I.A2205/2021, IA/875/2021: List the matter on 16.08.2021.

-Sd-

**(L.N. GUPTA)
MEMBER (T)**

-Sd-

**(ABNI RANJAN KUMAR SINHA)
MEMBER (J)**