

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**COURT - IV**

**ITEM No.102**  
**IA/4009/ND/2022 IN IB/177/ND/2019**

**IN THE MATTER OF:**

Integrated Batteries India Pvt Ltd	...	Applicant
Versus		
Mainframe Energy Solution Pvt Ltd	...	Respondent

**Order under Section 9 of IBC, 2016.**

**Order pronounced on 20.10.2023**

**CORAM:**

**MR. MANNI SANKARIAH SHANMUGA SUNDARAM,  
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,  
HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

IA/4009/ND/2022 IN IB/177/ND/2019 stands dismissed.

**Sd/-**

**DR. BINOD KUMAR SINHA  
MEMBER (TECHNICAL)**

**Sd/-**

**MANNI SANKARIAH SHANMUGA SUNDARAM  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH**  
**COURT-IV**

**IA-4009/2022**

**IN**

**Company Petition No. IB- 177 (ND)/2019**

**(Under Section 60 (5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules 2016)**

**IN THE MATTER OF:-**

Dr. Sandhya Vatsyayana

**..... Applicant No.1**

Mr. Hemant Vatsyayana

**..... Applicant No.2**

**VERSUS**

Mr. Devendra Kumar Lodha

Resolution Professional

M/s. Mainframe Energy Solution Private Limited

**..... Respondent No.1**

Mr. Jitender Narayan

(Suspended Director/Successful Resolution Applicants)

**..... Respondent No.2**

**AND IN THE MATTER OF:**

M/s. Integrated Batteries Private Limited

**... Operational Creditor**

**VERSUS**

M/s. Mainframe Energy Solutions Private Limited

**... Corporate Debtor**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,  
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,  
HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on:20.10.2023**

**ORDER**

**PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (JUDICIAL)**

The present application has been jointly filed on behalf of Dr. Sandhya Vatsyayana and Mr. Hemant Vatsyanana ('applicants') under Section 60(5) of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Rule 11 of the National Company Law Tribunal Rules, 2016 inter alia seeking the following relief(s):-

- i) To Order the Resolution Professional and Resolution Applicant to accept the Claim of the Applicants;
- ii) May pass any other order that this Hon'ble Tribunal deem fit to serve the end of justice

2. Briefly stated, the facts as averred by the applicant in the present application are that M/s. Mainframe Energy Solution Private Limited ('Corporate Debtor') was engaged in the business of Solar Energy System installation with expertise in Design, Engineering, Installation and Turnkey Execution. The Applicant upon the representations and assurances of the Corporate Debtor had agreed for the installation of a 5 KW Solar Energy System and two Solar Water Heating Systems of 150 ltr. capacity each and made a part payment of Rs. 3,20,000/-. However, the Corporate Debtor had rendered a deficient service resultant to which the Applicants had sent a legal notice dated 31st August, 2015 through her advocate demanding to replace, restore and commission the operations of Solar Energy System and Solar Water Heater within 7 days of the receipt of the notice or remove the Solar Energy System and Solar Water Heater and refund the amount of Rs. 3,20,000/- along with

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**I.A./4009/2022**

**IN**

**C.P.(IB)/177/2019**

**Dr. Sandhya Vatsyayana & Anr. v. Devendra Kumar Lodha, RP & Another**

**Date of Order: 20.10.2023**

interest at the rate of 18% per annum from the date of payment. Subsequently, the applicants had filed a consumer complaint before the Hon'ble District Consumer Dispute Redressal Commission, Shalimar Bagh praying that Corporate Debtor may be directed to remove the Solar Energy System and Solar Water Heater and refund the amount of Rs. 3,20,000/- along with interest at the rate of 18% per annum from the date of payment, also pay a sum of Rs. 72,000/- towards the repairing cost and the Complaint Case No. 819/2016 is pending before the Hon'ble District Consumer Dispute Redressal Commission, Shalimar Bagh

3. The Corporate Insolvency Resolution Process against the Corporate Debtor was initiated by this Hon'ble Adjudicating Authority vide its order dated 11.10.2019 in C.P.(IB) No.177/2019 and the Public Announcement in Form A as per Regulation 6(1) of CIRP Regulations, 2016 was made on 11.01.2020 in the newspaper Financial Express (English, Delhi Edition) and Jansatta (Hindi, Delhi Edition) wherein all the creditors were invited to submit their claim and the last date for submission of proof of claim was 21.01.2020. The Applicants got to know about the initiation of CIRP of the Corporate Debtor in the month of February, 2022 and therefore, the Applicants submitted their claim in Form B before the Resolution Professional ('Respondent No.1') vide e-mail dated 03.02.2022 and the Respondent No. 1 had reverted back vide e-mail dated 07.03.2022, informing that the claim of the Applicants cannot be accepted as the Respondent No. 2 has submitted a Resolution Plan and the same is for consideration before the Hon'ble Adjudicating authority.
4. Further, it is submitted that the Resolution Professional ('Respondent No.1') and the Successful Resolution Applicant ('Respondent No. 2') were aware of the proceedings against the Corporate Debtor pending before the Hon'ble District Forum but never intimated the forum or the Applicants about the initiation of the CIRP against the Corporate Debtor. To support the contentions, the applicants placed reliance on Hon'ble NCLAT's judgement in **Puneet Kaur v. KV Developers [ Comp. App. (AT) (Ins.) No.390/2022]**.

5. We have heard the submissions made by the Ld. Counsel for the Applicants and the Respondent No.1 and have meticulously gone through the documents produced on record. The issue before this Adjudicating Authority is, “whether the Respondent No.1’s action of rejecting the claim of the Applicants on the ground that the same is filed highly belatedly is valid?”
6. A brief perusal of the material on record shows that the CIRP commenced on 11.10.2019, public announcement inviting the claims from creditors was made on 11.01.2020, wherein the last date for filing of the ‘Claims’ was 21.01.2020, the Resolution Plan as submitted by the Respondent No.2 was unanimously approved by CoC in its 13<sup>th</sup> CoC Meeting dated 05.01.2022 and the application bearing I.A/1577/2022 seeking approval of Resolution Plan was filed before this Adjudicating Authority on 19.01.2022 whereas the Applicants had filed the ‘Claim’ before the Respondent No.1 on 03.02.2022, which is indeed highly belated not only from the due date of filing the claim, but even from the date of approval of Resolution Plan by the Committee of Creditors. The Copy of the e-mail dated 07.03.2022 sent by Respondent No.1 to the Applicants is extracted herein below:-

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From: Dev Lodha (cadklodha@gmail.com)  
To: dr.sandhyavats@gmail.com  
Cc: adv.raghavtiwari@yahoo.com  
Date: Monday, 7 March, 2022, 10:26 pm IST

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Dear Mam

It is informed to you that the SUSPENDED DIRECTOR Mr Jitender Narayan has submitted his resolution plan and the said plan is under consideration before hon'ble NCLT BENCH New Delhi. As per this plan total proposed amount for operational Creditor is Rs 50,000 thus you are requested to make appeal before Hon'ble Nclt for further admission of your claim as We have already submitted Resolution plan BEFORE hon'ble NCLT BENCH NEW DELHI for thier approval.

Further as per your claim document it is found that your claim is disputed claim of damaged solar panel and for the same you have already filed complaint before Court in the year 2015-16 and the same is pending. Therefore if you want any further action for your claim, you may appeal before Hon'ble, Nclt Bench New Delhi as now the HON'ble NCLT IS the the proper authority to adjudicate your claim as we already submitted resolution plan and it is too late.

Thanks  
Devendra Kumar Lodha  
RP on the behalf of  
Mainframe Energy Solution Private Limited

**(extract of e-mail dated 07.03.2022)**

7. Under the Scheme of the Code, once an application is admitted for CIRP and IRP is appointed, the IRP is required to make a Public Announcement. The purpose of

making public announcement under Section 15 of the Code, 2016 read with Regulation 6 of CIRP Regulations, 2016 is to make all the interested parties/stakeholders aware of the initiation of the CIRP of the Corporate Debtor so as to enable them to submit their claim and facilitate in preparing the information memorandum which is issued subsequently, after the collection and collation of claims of the operational and financial creditors so as to provide the Prospective Resolution Applicant all relevant information to enable them to make a legally and financially sound Resolution Plan for the Corporate Debtor as is required under Section 29 of the Code, 2016. Therefore, the public announcement made by the RP would constitute deemed knowledge on the applicant herein.

8. Further, the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, provides clear timeline under Regulation 12(2) for submission of claim with proof by the creditor who fails to submit the claim with proof within the time stipulated in the public announcement, quite obviously to enable the potential resolution applicants to submit realistic and workable resolution plans after due diligence, and which can be taken up further for finalisation. The relevant regulation is reproduced hereunder:

**“12. Submission of proof of claims. –**

(1) xxxxxx

(2) *A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.*

(3) Xxxxx ”

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9. It transpires from record of instant case that the applicants had submitted their claim on 03.02.2022 after 772 days from the invitation of submitting claims through public notice on 11.01.2020. The extended time period as per Regulation

12(2) of the IBBI (CIRP) Regulations, 2016 for submission of claims with proof is ninety days from the date of initiation of the insolvency resolution process. It is an admitted fact that the COC had approved the resolution plan and the same is pending before this Adjudicating Authority much before the said claim was preferred by the applicants before the RP.

10. The ground taken by the Applicants that the Applicants are pursuing the consumer complaint before the Hon'ble District Forum and the same is pending for adjudication, does not strengthen or substantiate their case as the timelines given under IBC are to be strictly adhered to and any laches on behalf of the 'Applicant' in filing its 'Claim' before the Respondent No.1 cannot be a substantial ground for condoning the delay. Moreover, keeping in view the aforementioned dates, it is clear that the actual time period of delay in submitting the said Claim Form is highly belated to 772 days.
11. As regard to the applicant's reliance on '**Puneet Kaur**' case, this Adjudicating Authority is of the considered view that the facts of the present case are distinguishable as the case in Puneet Kaur (supra) relates to Homebuyers where there were Builder Buyer Agreements ('BBA') and it was held that rightfully some provisions in the Plan/submission of Claims are to be made for the genuine Homebuyers whose details are available with the Resolution Professional. The said decision is therefore, not applicable to the facts of the present case.
12. This Adjudicating Authority is duty bound to balance the rights of the other stakeholders who have approached the Resolution Professional on time as well as the interest of the Successful Resolution Applicant whose plan had been approved by the Committee of Creditors. If a large number of condonation of delay applications like the present one are entertained at this stage, the object of the Code, 2016 and its timeline will be adversely affected. It is pertinent to note that reversal of stages, affects progress, therefore, timely and duly taking steps

by all stakeholders is material, otherwise, the process of CIRP will become an endless process.

13. This view is also supported by Hon'ble Supreme Court of India in most recent judgement in case of **M/s. RPS Infrastructure Limited vs. Mukul Kumar in Civil Appeal No. 5590 of 2021, judgement dated 11.09.2023**, wherein it was categorically held as hereunder:

“The mere fact that the Adjudicating Authority has yet not approve the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other similar persons who may jump onto the bandwagon. As described above, in Essar Steel, the Court cautioned against allowing claims after the resolution plan has been accepted by the COC.”

14. In view of the above, the **I.A./4009/ND/2022, being devoid of merits, stands dismissed.**

**Sd/-**  
**(DR.BINOD KUMAR SINHA)**  
**MEMBER (T)**

**Sd/-**  
**(MANNI SANKARIAHSHANMUGA SUNDARAM)**  
**MEMBER (J)**