

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (COURT-II)
SPECIAL BENCH
KOLKATA**

**IA (IB) NO. 1318/(KB)/2023
CONNECTED WITH
CP (IB) NO. 250/(KB)/2021**

In the matter of:

IBC under Section 9

And

In the matter of:

SRF Limited

... .. **Operational Creditor**

And

In the matter of:

M/s. Birla Tyres Limited, a company incorporated under the provisions of the Companies Act, 2013, having its registered office at 9/1, R.N. Mukherjee Road, 8th Floor, Birla Building, Kolkata – 700001.

... .. **Corporate Debtor**

And

In the matter of:

Alfa Pigment and Chemicals Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at 16, Dum Dum Road, Kolkata – 700074.

... .. **Applicant**

Versus

Mr. Pritam Bayal, Resolution Professional of Birla Tyres Limited, having its office at 64J, Linton Street, Beniapur, Kolkata – 700014.

... .. **Respondent**

Date of hearing: 28.08.2023

Date of Pronouncement: 04.09.2023

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI BALRAJ JOSHI, HON'BLE MEMBER (TECHNICAL)

Appearance (via video conferencing/physically)

Mr. Shaunak Mitra, Adv.] For the RP

Mr. Avishek Guha, Adv.]

Ms. Arunika Dutta, Adv.]

Mr. Amardeep Singh, Adv.]

Mr. Pritam Bayal, RP]

Mr. Tridib Bose, Adv.] For Manav Investment & Trading Co. Ltd.
in IA (IBC)/1421(KB)2023

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Ms. Rashmi Singhee, Adv.] For the Applicant in IA (IBC)/1318(KB)/2023
Ms. Madhuja Barman, Adv.]

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. Heard the Ld. Counsel for the parties.
2. This application has been preferred by the Applicant (Alfa Pigment and Chemicals Private Limited) under Section 60 (5) of the IBC read with Rule 11 of the NCLT Rules, 2016 to seek condonation of delay in lodging a claim with the Resolution Professional (RP in short) of the Corporate Debtor M/s. Birla Tyres Limited.
3. It is submitted by the Applicant that CIRP under Section 9 of the IBC, 2016 was initiated against the Corporate Debtor vide an order passed by this Adjudicating Authority on 05.05.2022. A public announcement was made wherein the last date for filing the claim was 19.05.2023. The erstwhile Resolution Professional was replaced by the present Resolution Professional being the Respondent in the present application. On 30.10.2022, the Applicant was unaware of the initiation of the CIRP and as soon as it learnt about the initiation of CIRP, it filed its claim in Form-B on 10.07.2023 and on the very next date i.e., on 11.07.2023 the claim was rejected by the Respondent Resolution Professional as it was submitted beyond the stipulated time. Hence, the present application has been preferred to seek condonation of delay in filing claim with the Resolution Professional.
4. Ld. Counsel appearing for the Resolution Professional would submit that the last date for filing of claim was 30.06.2022, whereas the claim was lodged by the Applicant on 10.07.2023 and, therefore, after a huge delay of 417 days. That the plan stands already approved by COC and hence, this condonation of delay in submission of claim at this belated stage cannot be entertained.
5. The Applicant has pleaded that the entire exercise is at nascent stage and, therefore, it is entitled to submit its bona fide claim denial whereof would amount to unfair and arbitrary treatment meted out to the Applicant. Asserting that there is trivial lacunae

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on the part of the Applicant, Ld. Counsel would refer to paragraph 39 of the decision in *State Tax Officer (1) Vs. Rainbow Paper Limited* reported in 2022 SCC OnLine SC 1162 where the Hon'ble Apex Court has held that the time period prescribed in Regulation 12 of IBBI (IRP for Corporate Persons) Regulations, 2016 is not mandatory but only directory.

6. Per contra, Ld. Counsel appearing for the Resolution Professional vehemently opposing the stand of the Applicant, would claim that Rainbow Paper Limited is no more a good law and delay of 417 days without any sufficient cause or justification cannot be allowed.
7. We have considered the rival contention and perused records. Other than lack of knowledge, no ground has been pleaded and no authorities have been cited by the Applicant which would inspire us to condone the massive delay of 417 days in lodging of the claim.
8. Hence, we dismiss this application.
9. File be consigned in record.

**Balraj Joshi
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order signed on this, the 4th day of September, 2023.

Sayon [Steno]