

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

Item No. 212
(IB)-2240(ND)2019

New IA-6166/2022 IA-1175/2022 IA-1552/2022 IA-4249/2022

IN THE MATTER OF:

M/s. Hi Tech Resource Management ... Applicant/Petitioner Limited

Versus

M/s. Overnite Express Limited ... Respondent

Under Section: 7 of IBC, 2016 (CIRP)

Order delivered on 21.12.2022

CORAM:

**SHRI ASHOK KUMAR BHARDWAJ,
HON'BLE MEMBER (J)**

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

PRESENT:

For the Applicant : Adv. Piyush Beriwal in IA. 6166/2022, Mr. Rohit Gandhi and Mr. Adhish Srivastava for Resolution Applicant

For the RP : Ms. Shreyasi Kunwar, and Mr. Abhishek Parmar, Adv.

ORDER

IA-6166/2022: The present application has been filed by the Commissioner CGST and Central Tax Delhi North seeking direction to R-1 to admit the claim of the Applicant and issue direction to RP to submit the details of the same to the Resolution Applicant. Having submitted so, the Applicant prayed for issuance of a direction for adding an addendum to the Resolution Plan and placing the same for the CoC for further consideration.

Heard the Ld. Counsel for the Applicant as well as the Ld. Counsel appearing for the RP. Ld. Counsel for the Applicant submits that his claim was rejected by the RP on the ground of the delay. He placed reliance on the judgment of the Hon'ble Supreme Court in the matter of State Tax Officer Vs. Rainbow Papers 2022 SCC online Supreme Court page no. 162, wherein Hon'ble Apex Court viewed that the timelines are directory and not mandatory in nature.

He further submitted that the issue of consideration of claim of the creditors was considered by the Hon'ble NCLAT in the matter of Puneet Kaur Vs. K.V. Developers Pvt. Ltd. in Company Appeal 390/2022 dated 01.06.2022 and the order passed by Hon'ble NCLAT was upheld by the Hon'ble Apex Court in Civil Appeal No. 5187-5201/2022. According to him, the claim of creditors could be considered even after approval of the Resolution plan by CoC.

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In view of the above, he prays that the direction be given to the RP to consider the claim of the Applicant. Ld. Counsel for the RP submits that in this matter the Resolution Plan has already been approved and submitted to the Adjudicating Authority for approval.

However, in the light of the judgments relied by the Ld. Counsel for the Applicant, we feel it appropriate to refer the present claim of the Applicant to the RP with a direction to examine the same on merit in the light of the judgments of Hon'ble Supreme Court (ibid). The Applicant will be at liberty to pursue the matter with the RP.

With this, the IA stands disposed of.

IA-1175/2022: In compliance of the last order, the certificate of the Successful Resolution Applicant being an MSME duly certified by the Director of the Industries to the Government and the voting sheet (approving the plan) duly signed by the members of the CoC are still not uploaded on the DMS. The Applicant is given last opportunity to comply with the order dated 05.12.2022. List on 31.01.2023.

IA-1552/2022: The prayer made in the present application is for condonation of delay and issuance of direction to RP to admit the claim of the Applicant Bank. The reason for non-consideration of the claim of the Applicant is that the same was not espoused before the Ld. RP within prescribed period of limitation. Ld. Counsel for the Applicant submitted that the claim was filed before the resolution plan was placed before the CoC. As has been ruled by Hon'ble Supreme Court in the matter of State Tax Officer Vs. Rainbow Papers 2022 SCC online Supreme Court page no. 162, timelines for approaching the RP are not mandatory but only directory in nature.

In the wake, we deem it appropriate to dispose of the present IA with direction to the Respondent (RP) to examine the claim of the Applicant on merit and take appropriate action in accordance with the law, rules and procedure.

With this, the IA stands disposed of.

IA-4249/2022: There is no appearance on behalf of the Applicant.

Accordingly, the IA is dismissed for default and non-prosecution.



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



**(ASHOK KUMAR BHARDWAJ)
MEMBER (J)**