

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

Item No. 213
(IB)-995(ND)18

IA-172/2024, IA/6636/2023, IA-5634/2023
IA- 5415/2023, IA- 5771/2023, IA/1489/2020

IN THE MATTER OF:

M/s. VMS Equipment Pvt. Ltd.

...

Applicant/Petitioner

Versus

M/s. Primose Inftatech Pvt. Ltd.

...

Respondent

Under Section: 9 of IBC 2016

Order delivered on 13.03.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Charu Sachdev Kotak Mahindra
For the Respondent/ : Sr. Adv. P. Nagesh, Adv. Mrinal Harsh Vardhan,
Ex-promoter : Adv. Kailash Ram, Adv. Yogender Singh
For the RP : Adv. Anuja Pethia, Adv. Subhashish Kumar
For the SRA : Adv. Nitin Pandey, Adv. Adhish Sharma
For the GNIDA : Adv. UN Singh

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

IA-172/2024: The prayer made in the application is to consider the claim of the Applicant by condoning the delay of 1,758 days. At this stage when the application for approval of resolution plan has already been filed and is pending before this Tribunal, in view of the judgment of Hon'ble Supreme Court in **RPS Infrastructure vs. Mukul Kumar and Anr.**, we cannot issue any direction to RP to admit the claim at the Applicant after such a long delay. The relevant excerpt of the judgment passed by Hon'ble Supreme Court reads thus:

“8.The challenge by the respondent no.1 before the NCLAT was primarily based on the potential consequences of allowing such a belated claim when the COC had already approved the Resolution Plan. The appellant having made the claim more than a year after the invitation of claims by the public notice dated 30.03.2019; it was urged that allowing such claims would set the clock back on the CIRP and set a precedent, thereby making CIRP prolonged and inefficacious. In support of this plea, reliance was placed on the judgment in Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Ors. where this Court opined that a successful resolution applicant cannot be faced with undecided claims after the resolution plan has been accepted. This Court observed:

“...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.”

On the other hand, the appellant explained that it could not file the claim in time as it was unaware of the public announcement. A belated claim should not be shut out as the time-periods in the IBC are merely directory and not mandatory as per Brilliant Alloys Private Limited v. Mr. S. Rajagopal & Ors., and in any case the resolution plan was yet to be approved by the Adjudicating Authority. The appellant contended that respondent no.1 had failed to discharge his duty to include the appellant's claim in the information memorandum as a contingent liability.”

In view of the aforementioned the application is **dismissed**.

IA-6636/2023: As prayed by Mr. Mrinal Harsh Vardhan, Ld. Counsel appearing for the Respondent further two weeks' time is granted for filing reply to the application.

IA-5634/2023, IA- 5415/2023, IA- 5771/2023, IA/1489/2020: List the IAs on 25.04.2024.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)