

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

Item No. 202
(IB)-46/ND/2024

IN THE MATTER OF:

Kaliber Associates Pvt. Ltd. ... **Applicant/Petitioner**

Versus

AIMS Max Gardenia Developers Pvt. Ltd ... **Respondent**

Under Section: 7 of IBC, 2016

Order delivered on 02.02.2024

CORAM:

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

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

PRESENT:

For the Applicant : Adv. Anirban Bhattacharya, Adv. R. Choudhary

For the Respondent :

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

The present application has been preferred under Section 7 of IBC 2016 for directing commencement of CIRP qua Sanya Hospitality Pvt. Ltd. i.e. Respondent herein before us. During the course of hearing Mr. Anirban Bhattacharya Ld. Counsel appearing for the Applicant fairly conceded that the default in the present case could occur on 31.01.2019, thus the normal period of limitation expired on 30.01.2022. Nevertheless, relying upon the Judgment of Hon'ble Supreme Court in Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020, he argued vociferously that the period from 15.03.2020 to 28.02.2022 should be excluded while computing the period of limitation for filing the present application. He submitted that though the period of limitation prescribed for filing this an application under Section 7 of IBC is 3 years, but in the present case, since the aforementioned period i.e. from 15.03.2020 till 08.02.2022 need to be excluded, the Applicant would have the benefit of further 687 days for the purpose of limitation, thus the present petition filed by him on 03.01.2024 is within the prescribed period of limitation.

We are afraid that the reading of the aforementioned Judgment by the Ld. Counsel for the Petitioner is not correct. In fact in terms of the said Judgment

in such cases where the period of limitation could expire between 15.03.2022 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons had a limitation period of 90 days from 01.03.2022 and in the event the actual balance period of limitation remaining was more than such remaining period. The clause I, II, III of Para 5 of the Judgment reads thus:-

- I. *“The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.”*

In the present case, the period of 3 years from the date of cause of action (default) could expire on 30.01.2022 i.e. between the period from 15.03.2022 till 28.02.2022. Thus indubitably, the period of limitation available to Applicant w.e.f. 01.03.2022 would be 90 days. As the present application could be preferred only on 03.01.2024, apparently the same is barred by limitation.

Mr. Anirban Bhattacharaya did not raise any other argument on the issue of limitation. **In the wake, we are constrained to reject the present application as time barred. No cost.**

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

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