

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

Item No. 233
(IB)-17(ND)2019

IA/1044/20, IA/2987/2020 IA/3551/2020 IA/4356/2020
IA/4534/2020 IA/1668/2020 IA/4129/2020, IA/4218/2020 New
IA/762/2021

IN THE MATTER OF:

M/s. Ample Infrastructure Pvt. Ltd. ... Applicant/Petitioner

Versus

M/s. Intellicity Business Park Pvt. ... Respondent
Ltd.

Under Section: 7 of IBC, 2016

Order delivered on 12.02.2021

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (J)

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

PRESENT:

Mr. Atul Sharma, Advocate with Ms. Renuka Iyer Advocate for SSR Townships/Resolution Applicant, Mr. Raghavendra M Bajaj and Mr. Agnish Aditya, Advocates for Applicant in IA 4534 of 2020, Ms. Tania, Advocate for R1 and R4, Mr. Pawan Bhushan, Adv for financial creditors in IA 2987 and IA 3551 of 2020, Mr. Kumar Mihir, Adv and Mrs. Geeta Mathur, for Applicants in IA 4356 of 2020 & IA 4218 of 2020, Mr. Sameer Rastogi, Advocate for RP

ORDER

IA/4218/2020 : By filing this application, the petitioner has prayed for an early listing of IA 4356/2020. Since this IA has already been listed for hearing today, this application has become infructuous.

The IA is dismissed, as being infructuous.

IA/2987/2020 : The petitioner seeks permission to withdraw the application. The prayer is allowed.

The IA is dismissed as withdrawn.

IA/1044/2020: Even after issuance of the bailable warrant of arrest, the respondent, Mr. Chandrakant has not appeared. Therefore, non-bailable warrant be issued to the respondent through the

DCP/SSP/Commissioner of Police concerned. In the meantime, the RP is directed to initiate criminal action against the respondents under Section 68-70 of the IBC along with the other relevant provision of the Indian Penal Code.

List the matter on 22nd February 2021.

IA/1668/2020: Petitioner has filed an application to de-freeze the account of corporate debtor, which was frozen under the ED proceeding.

Heard the Ld. Counsel appearing for the applicant/ R.P, who in course of argument submitted that account of the corporate debtor was frozen under the ED proceeding initiated prior to appointment of the RP.

Considering the submissions made and on perusal of the averment made in the application, we are of the opinion, since the account was frozen under a criminal prosecution/proceeding, the petitioner is well advised to move an appropriate application before the appropriate criminal court / authority where the matter has been pending or on whose order the account of the CD was frozen.

With this, the present IA stands disposed of.

IA/4534/2020: Matter is heard and order reserved.

-Sd-

(L.N. GUPTA)
MEMBER (T)

-Sd-

(ABNI RANJAN KUMAR SINHA)
MEMBER (J)

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

IA-4534/2020
IN
Company Petition No. (IB)-17(ND)/2019

IN THE MATTER OF:

M/s Ample Infrastructure Pvt. Ltd.

...Operational Creditor

Versus

M/s Intellicity Business Park Pvt. Ltd.

...Corporate Debtor

AND IN THE MATTER OF:

M/s Ample Infrastructure Pvt. Ltd.

Through its Director,

Mr. Rakesh Mehra

D-995, New Friends Colony

New Delhi-110025

.....Applicant

Versus

M/s Intellicity Business Park Pvt. Ltd.

Through its Resolution Professional

Mr. Sarvesh Kashyap,

Reg No. IBBI/IPA-002/IP-N00127/2017-18/10296

Shop No- 7, DDA Market

E- Block, East of Kailash, New Delhi-110065

...Respondent

Order Delivered on: 12.02.2021

SECTION: Rule 11 of NCLT Rules 2016

CORAM :

SHRI. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

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

PRESENTS:

For the Applicants

**: Mr. Raghavendra Mohan Bajaj and
Mr. Sanskar Agarwal, Advocates**

(IB)-17/ND/2019, IA-4534/2020

M/s Ample Infrastructure Pvt. Ltd. Vs. M/s Intellicity Business Park Pvt. Ltd.

BY THE ORDER OF THE BENCH

The Applicant has filed this application praying therein to direct the RP to accept the claim. Heard the Ld. Counsels appearing for the Applicant as well as for the RP and perused the averments made in the Application.

2. Ld. Counsel appearing for the Applicant submitted that although it was on his application, the CIRP was initiated against the Corporate Debtor, he could not file the claim within the period notified by the RP. He submitted that though the CIRP was initiated on 27th May, 2019, he filed the claim before the RP only on 18th August 2020. He further submitted that the RP vide his email dated 19th August 2020 advised the Applicant to approach the NCLT.

3. The Applicant prays for a direction to RP to accept the claim filed by the Applicant.

4. He placed reliance on the Order dated 2nd August 2019 passed by the Coordinate Bench of the NCLT in the matter of Col. Sanjeev Dalal V/s. M/s. International Recreation & Amusement Limited.

5. On the other hand, Ld. Counsel appearing for the RP submitted that the resolution plan has already been approved by the COC on 31st July 2020 before the submission of the claim by the Applicant. He further submitted that the maximum period of 330 days of CIRP had expired on 21.04.2020 and thereafter, another extension was granted till 31st July 2020. This claim was filed by the Applicant on 19th August 2020 i.e. after the expiry of the extended period.

6. In the light of the submissions raised by the parties, when we consider the claim of the Applicant, we notice that the decision upon which the applicant places reliance records the reason for giving permission to allow the claim was that the petitioner was not aware about initiation of the CIRP. But here in the case in hand, it is the Applicant on whose application, the CIRP was initiated. We further notice that in the order relied upon, the coordinate Bench has not quoted the relevant provision for allowing submission of the claim.

7. At this juncture, we would like to quote the Regulation 12 of IBBI (Insolvency Resolution Process For Corporate Persons) Regulation, 2016 and relevant portion is quoted below:

“12 of IBBI (Insolvency Resolution Process For Corporate Persons) Regulation, 2016 : Submission of proof of claims.

(1)-----

(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)-----"

We observe that the Regulation 12(2) is substituted by notification no. IBBI/2018-19, dated 3rd July 2018 (w.e.f. 04-07-2018). Prior to that in place of “on or before the ninetieth day of the insolvency commencement date”, it was mentioned “till the date of approval of a resolution plan by the committee”.

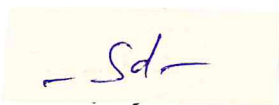
8. When we consider the unamended and the amended Regulation 12(2) IBBI (Insolvency Resolution Process For Corporate Persons) Regulation, 2016 together, we can safely say that though before the amendment, there was a provision for submission of a claim before the approval of a resolution plan by the COC but post-amendment, it is only on or before the ninetieth day of the insolvency commencement date.

9. In the light of this position of law, when we consider the prayer of Applicant, we notice that admittedly the applicant has filed the claim not only after the approval of Resolution plan by the COC but also after expiry of the extended period of CIRP. The CIRP period of 330 days expired on 21.04.2020 and thereafter, the extension was granted till 31st July 2020.

10. For the reasons discussed in aforementioned paragraphs, we are of the considered view that there is no force in the contention raised by the applicant and prayer of applicant is liable to be rejected. Hence, we have no option but to reject the prayer.

11. Accordingly, we hereby reject the prayer of the applicant.

12. The IA is Dismissed.



(L. N. Gupta)
Member (T)



(Abni Ranjan Kumar Sinha)
Member (J)

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IN THE MATTER OF:

M/s. Ample Infrastructure Pvt. Ltd. ... Applicant/Petitioner

Versus

M/s. Intellicity Business Park Pvt. ... Respondent
Ltd.

Under Section: 241/242

Order delivered on 12.02.2021

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (J)

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

PRESENT:

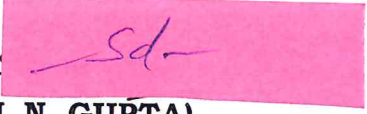
Mr. Sameer Rastogi, Advocate for RP
Kumar Mihir Adv and Mrs. Geeta Mathur, for Applicants in IA 4356 of
2020 & IA 4218 of 2020

Mr. Pawan Bhushan, Adv for Financial Creditors IA 2987
Raghavendra M Bajaj and Agnish Aditya, Advocates for Applicant in IA
4534 of 2020

Mr. Atul Sharma, Advocate with Ms. Renuka Iyer Advocate for SSR
Townships/Resolution Applicant

ORDER

IA/4534/2020 - Due to typographical error, it was mentioned in the order dated 12.02.2021 that the "order is reserved", although the order was dictated and delivered in the open court. With this the earlier order dated 12.02.2021 is corrected. Order in IA 4534/2020 has been issued separately.


(L.N. GUPTA)
MEMBER (T)


(ABNI RANJAN KUMAR SINHA)
MEMBER (J)