

Time Bound Resolution Process: Whether claims can be allowed after the approval of Resolution Plan by CoC?

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There has been several cases before the Hon'ble National Company Law Tribunal (NCLT), Hon'ble National Company Law Appellate Tribunal (NCLAT) and subsequently various appeal before the Hon'ble Supreme Court of India to deal with the issue regarding the delay in filing of claims by the creditors in case of Insolvency Petition filed against the Corporate Debtor once the Resolution Plan is approved by the Committee of Creditors (CoC). And for this, it is pertinent to understand the importance of **Insolvency and Bankruptcy Code, 2016 (IBC)** before delving into the detail about the issue concerned.

A country can continue to operate in its best capabilities only if its financial regulations are equally strong and for this reason the Legislature frames rules and regulations for every commercial unit of the financial system. The idea behind having IBC is to have a mechanism at place which provides opportunity for revival of a Business even in case where the management of such Business has failed to meet its liability and only if such revival doesn't take place then move to the last resort of Liquidation. However, what stands out is the special importance placed on the time frame for the entire Company Insolvency Regulation Process (CIRP). The same can be inferred through the different time lines provided under the IBC for commencement of a procedure and the limitation provided after that.

Now when an issue regarding the filing of claims arises, it becomes important to analyze the provisions governing the filing of claims. Section 15 of the IBC and Regulation 6 of the **IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016 (CIRP Regulations)** mandate a public announcement of the CIRP through newspapers. Further Regulation 12 of the IBBI Regulations provides timeline of Ninety days to creditors to file claims before the Interim Resolution Professional (IRP) or the Resolution Professional (RP) or file the claim on or before the last date mentioned in the public announcement.

The IBC is made time bound so that the mechanism remains true to its core. If the claims are allowed beyond the timeline it would set the clock back and make CIRP prolonged and inefficacious.

In this regard reliance maybe placed on the case of **Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [2019] ibclaw.in 07 SC** wherein the Hon'ble Supreme Court observed that, a successful resolution applicant cannot be faced with undecided claims after the resolution plan has been accepted. It held that :

"...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."

Further, reliance may be placed on the judgement of the Hon'ble Supreme Court of India in the case of **Jaypee Kensington Boulevard Apartments Welfare Association and others. Vs. NBCC (India) Limited and Others [(2021) ibclaw.in 63 SC]**, whereby it was held that due adherence to the timelines provided in the Code and related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution and if a claim is not made within the stipulated time, the same cannot become part of the Information Memorandum to be prepared by the IRP. It was further held that the Resolution Applicant cannot be expected make a provision in relation to any creditor or depositor who has failed to make a claim within the stipulated time and the extended time as permitted by Regulation 12 of CIRP Regulations.

However, a contrary view has also been taken by the Apex Court of India in the case of **State Tax Officer v. Rainbow Papers Limited (2022) ibclaw.in 107 SC**. The Hon'ble Supreme Court has held that the time period is not mandatory but only directory. The similar view has been taken in the case of **Vishal Saxena & Anr. v. Swami Deen Gupta Resolution Professional [(2020) SCC Online NCLT 2734]**, wherein the NCLT took the view that the time stipulation in Regulation 12 for submission of a claim is directory and not mandatory. The same has been the view of NCLT in the case of **Assistant Commissioner of Customs v. Mathur Sabhapathy Vishwanathan [(2021) ibclaw.in 83 NCLT]**.

It is often observed that the creditors take stand that the Resolution Plan, if accepted by the CoC but still pending before the Adjudicating authority for final approval, then it can be called back. Creditors have often relied on Section 31 of the IBC which provides that once the Adjudicating Authority has approved the Resolution plan which is in conformity with Section 30 of IBC then it shall be binding on all the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.

However, what stands important is, a Resolution Plan must be in conformity with the statutory provisions. This includes the steps taken by IRP and RP towards completing the entire process of CIRP along with adhering to the time limit provided. Therefore, it is important for the IRP and RP while accepting claims to comply with the provisions of Regulation 6 & 6A of the CIRP Regulations, that requires announcement through newspaper as well as personal communication to creditors if the information for the communication is available, as per the last available books of accounts of Corporate Debtor.

The IRP/RP must ensure to cross check the Corporate Debtor's books of accounts or Corporate Debtor's financial records to know the actual financial position of the Corporate Debtor. It may move an application under Section 19 of the IBC for procuring the Corporate Debtor's records.

It can be observed that a legislature has given paramount importance to the commercial wisdom of CoC. The resolution plan approved by CoC holds significant importance as the power with the Adjudicating Authority is more of a Judicial Review before the final approval. The Hon'ble Apex Court of India in the recent case of **M/s. RPS Infrastructure Ltd v. Mukul Kumar & Anr. (2023) ibclaw.in 102 SC** held that, the mere fact that the Adjudicating Authority has yet not approved the plan does not imply that the plan can go back and forth, thereby making the CIRP an endless process. This would result in the reopening of the whole issue, particularly as there may be other

similar persons who may jump onto the bandwagon.

Therefore, we may say that the intent of the Judiciary is to upkeep the importance of time period while dealing with the matters of CIRP and therefore any claim if allowed to be accepted after the prescribed time period it may jeopardize the whole CIRP process. However, that does not give any leverage to the IRP/RP from deviating from the statutory guidelines laid in the IBC.

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