

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-II**

**IA No. 3717of 2023
IN
CP (IB) No. 527/MB/C-II/2022**

In the Application of IA No.3717of 2023

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (“Code”) r/w Rule 11 of the National Company Law Tribunal Rules, 2016.

LT Foods Limited

Through,

Mr. Satish Rana C/o LT Foods Limited,

Having offices at 43 km Stone, G.T. Karnal Road,
Bahalgarh, Sonipat, Haryana – 131021.

...Applicant

V/s

Mr. Vijaykumar V. Iyer.

...Respondent

In the matter of

Bank of India

...Financial Creditor

Versus

Future Retail Limited

...Corporate Debtor

Order Delivered on : 05.10.2023

Coram:

Hon’ble Member (Technical)

Mr. Anil Raj Chellan

Hon’ble Member (Judicial)

Mr. Kuldip Kumar Kareer

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Appearances:

For the Resolution Professional : Adv. Harit Lakhani i/b
Shardul Amarchand
Mangaldas & Co.

ORDER

Per: Anil Raj Chellan, Member Technical

1. The present application is filed by LT Foods Limited, the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (the Code) for directing the Respondent, the Resolution Professional for Future Retail Limited (the Corporate Debtor) to consider and accept the claim submitted vide its Form B (proof of claim by Operational Creditor) dated 15.05.2023 against the Corporate Debtor under the Code.
2. Brief facts of the case leading to the filing of the present application are as under:
3. On a Petition filed by Bank of India, the Financial Creditor, this Tribunal vide its order dated 20.07.2022 initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and appointed Mr. Vijay Kumar V Iyer as Interim

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Resolution Professional (IRP) to carry out the functions as mentioned under the Code. The IRP made public announcement dated 23.07.2022 and called for submission of claims against the Corporate Debtor. After the period notified for submission of claims the Applicant submitted its claim in Form B for an amount of Rs. 2,14,34,833.54/- (Rupees Two Crore Fourteen Lakh Thirty-Four Thousand Eight Hundred Thirty-Three and 54 Paisa) towards supply of goods pursuant to the purchase orders issued by the Corporate Debtor. The Applicant submitted that the purchase orders are governed under the Terms of Trade (TOT) entered into between the Applicant and the Corporate Debtor whereby Corporate Debtor had to clear the invoices within thirty days from the receipt of the invoice under the TOT period from 01.04.2016 to 31.03.2017 and 45 days under the TOT period from 01.04.2018 to 31.03.2020. The defaults to clear the dues led to issue of advocate notice and settlement letter dated 25.09.2021 acknowledging the outstanding liability at Rs.4,56,96,577/-. Subsequent to the settlement letter, Corporate Debtor paid an amount of Rs. 15 Lakhs on 21.02.2022, but thereafter defaulted.

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4. The Respondent had not admitted the claim submitted by the Applicant as the claim was filed after 90th day of the Insolvency commencement date (in this case, after 18.10.2022). Thus, the claim was not admitted solely on the ground of procedural delay.
5. The Applicant raised various contentions such as the timeline stipulated under Regulation 12 (2) had been held to be directory and RP cannot reject the claim solely on the ground of delay, sufficient reasons had been shown for the delay, and had also relied upon the changes proposed to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and various orders passed by Hon'ble NCLAT and Hon'ble Supreme Court.
6. Though notice had been served to the Respondent, he preferred not to file a written reply.
7. We perused the records and heard the counsel appearing for the RP.

Findings

8. The only prayer sought in the Application is to direct the RP to consider and accept the claim of the Applicant as Operational

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Creditor though submitted after the specified period as per the notification issued by the RP and the Regulations / Code. The Applicant stated that the public announcement was non-navigable and the delay in approaching the IRP was owing to reasons and factors which were beyond the control of the Applicant. No doubt, the Applicant had brought on record candid reasons for the delay which had not been disputed by the Respondent.

9. It is relevant to observe that CIRP has not reached the stage of finalization or voting on the Resolution Plan and therefore, the delay in submission of claims would not affect the existing rights/process under the Code. It is settled position that the period prescribed under Regulation 12(2) is directory in nature and the belated claim submitted in CIRP can be considered on sufficient reasons unless the CIRP has reached the stage of approval of the Resolution Plan by the Committee of Creditors.
10. Having considered the reasons pleaded for the delay in filing the claim and the impact of admission of delayed claim to the current CIRP process, it is considered appropriate to give directions to the RP to consider and process the claim of the Applicant as per the

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Code. The RP is at liberty to verify and determine the claim based on the material produced before him and to act accordingly.

11. In view of the above, the Application bearing No. 3717/2023 is allowed.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)