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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IA/519/CHE/2021 in IBA/1459/2019

*(filed under Section 60(5) of IBC, 2016 read with Regulation 8A and 12(2) of the
IBBI (Insolvency Resolution for Corporate Persons) Regulations, 2016)*

In the matter of **M/s. Appu Hotels Limited**

R. Natarajan

No.42, Arumuga Asari Street,
Dharmapuri – 636 701

... Applicant

-Vs-

Mr. Radhakrishnan Dharmarajan,

Resolution Professional,
Appu Hotels Limited,
D-3 Triumph Apartments,
Jawaharlal Nehru Salai,
Arumbakkam, Chennai – 600 106

... Respondent

Along with

IA/247/CHE/2021 in IBA/1459/2019

(filed under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of **M/s. Appu Hotels Limited**

M/s. Aspri Spirits Pvt. Ltd.

1203, C/o. Riani Business Center, "A" Wing,
12th Floor, Kanakia Wallstreet,
Chakala, Andheri (E)
Mumbai – 400 093

... Applicant

-Vs-

Mr. Radhakrishnan Dharmarajan,

Resolution Professional,
Appu Hotels Limited,

No.26, 'O'Block, 18th Avenue,
Ashok Nagar, Chennai – 600 083

... Respondent

Along with

IA/248/CHE/2021 in IBA/1459/2019

(filed under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of **M/s. Appu Hotels Limited**

M/s. Vinspri Distributors Pvt. Ltd.

Plot No.221, Factory Building,
Mulund – Goregaon Link Road,
Near Nahur Village Road,
Bhandup (W)
Mumbai – 400 078

... Applicant

-Vs-

Mr. Radhakrishnan Dharmarajan,

Resolution Professional,
Appu Hotels Limited,
No.26, 'O'Block, 18th Avenue,
Ashok Nagar, Chennai – 600 083

... Respondent

Along with

IA/447/CHE/2021 in IBA/1459/2019

(filed under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of **M/s. Appu Hotels Limited**

M/s. New Kwaliti Diary

No.3/9, Sridharan Street,
Ayavoo Colony, Aminjikai,
Chennai – 600 023

Represented by Mr. M. Krishnan

... Applicant



-Vs-

Mr. Radhakrishnan Dharmarajan,
Resolution Professional,
Appu Hotels Limited,
No.26, 'O'Block, 18th Avenue,
Ashok Nagar, Chennai – 600 083

... Respondent

Along with

IA/446/CHE/2021 in IBA/1459/2019

(filed under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of **M/s. Appu Hotels Limited**

M/s. Balaji Foods
No.97 & 98, Santhosh Nagar Extension
Madananthapuram
Chennai – 600 125
Represented by Mr. J. Ramamurthy

... Applicant

-Vs-

Mr. Radhakrishnan Dharmarajan,
Resolution Professional,
Appu Hotels Limited,
No.26, 'O'Block, 18th Avenue,
Ashok Nagar, Chennai – 600 083

... Respondent

Along with

Cont. A/03/CHE/2021 in IBA/1459/2019

(filed under Section 60(5) of IBC, 2016 read with Rule 11 of NCLT Rules, 2016)

In the matter of **M/s. Appu Hotels Limited**

M/s. Crescent Sea Foods
No.427, Ponniamman Koil Street,
MMDA Mathur,



Chennai – 600 068
Represented by Mr. Illango

... Applicant

-Vs-

Mr. Radhakrishnan Dharmarajan,
Resolution Professional,
Appu Hotels Limited,
No.26, 'O'Block, 18th Avenue,
Ashok Nagar, Chennai – 600 083

... Respondent

Order pronounced on 15th July 2021

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Applicant : *Mr. S. Sathiyannarayana, Advocate*
For IA/247/CHE/2021, IA/248/CHE/2021,
IA/446/CHE/2021, IA/447/CHE/2021,
Cont.A./03/CHE/2021

Mr. Jayesh Dolia, Advocate
For Applicant in IA/519/CHE/2021

For Respondent : *Mr. V. Ramakrishnan, Senior Advocate*
For T. Ravichandran, Advocate

COMMON ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

1. Under consideration are Applications which are filed by the Financial Creditors / Operational Creditors of the Corporate Debtor viz. M/s. Appu Hotels Ltd. under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 aggrieved against the rejection of the



claim in relation to the Operational Creditor and also against non admission of the claim in relation to the Financial Creditor.

2. For the sake of convenience the following matters are taken up together to pass a common order, since the issues involved in the below applications are one and the same.

APPLICATIONS FILED BY TRADE CREDITORS / OPERATIONAL CREDITOR

(I) IA/247/CHE/2021 – ASPRI SPIRITS PVT. LTD.

3. The present Application has been filed by the Applicant in the capacity as an Operational Creditor seeking thereof to condone the delay of 184 days in submission of the proof of claim to the Respondents and consequently direct the Respondent to admit the claim of the Applicants and to include them in the list of creditors of the Corporate Debtor.

(II) IA/248/CHE/2021 – VINSPRI DISTRIBUTORS PVT. LTD.

4. The present Application has been filed by the Applicant in the capacity as an Operational Creditor seeking thereof to condone the delay of 184 days in submission of the proof of claim to the Respondents and consequently direct the Respondent to admit the claim of the Applicants and to include them in the list of creditors of the Corporate Debtor.



(III) IA/446/CHE/2021 – BALAJI FOODS

5. The present Application has been filed by the Applicant in the capacity as an Operational Creditor seeking thereof to condone the delay of 140 days in submission of the proof of claim to the Respondents and consequently direct the Respondent to admit the claim of the Applicants and to include them in the list of creditors of the Corporate Debtor.

(IV) IA/447/CHE/2021 – NEW KWALITY DAIRY

6. The present Application has been filed by the Applicant in the capacity as an Operational Creditor seeking thereof to condone the delay of 138 days in submission of the proof of claim to the Respondents and consequently direct the Respondent to admit the claim of the Applicants and to include them in the list of creditors of the Corporate Debtor.

(V) CONT. A/03/CHE/2021 – CRESCENT SEA FOODS

7. The present Application has been filed by the Applicant in the capacity as an Operational Creditor seeking thereof to condone the delay of 184 days in submission of the proof of claim to the Respondents and consequently direct the Respondent to admit the claim of the Applicants and to include them in the list of creditors of the Corporate Debtor.

8. The Learned Counsel Mr. S. Sathiyarayanan appearing on behalf of the Applicants submitted that this Tribunal vide its order dated 05.05.2020 had initiated the Corporate Insolvency Resolution Process in relation to the Corporate Debtor and appointed the Interim Resolution Professional. The Applicants herein have supplied products to Corporate Debtor's hotel at Chennai and Coimbatore and it was submitted that there are still amounts which are pending to be paid by the Corporate Debtor to these Operational Creditors.

9. It was submitted by the Learned Counsel for the Applicants that the IRP had caused paper publication on 09.05.2020 in Economic Times, English and on 10.05.2020 on The Hindu, Tamil, which have limited circulation even during normal times and much limited circulation during the pandemic. Hence, the Applicants herein were not aware of the initiation of the CIRP in relation to the Corporate Debtor and also it was almost impossible for the Applicants, due to lockdown restrictions to know about the CIRP process in relation to the Corporate Debtor.

10. It was submitted that the Applicants could file their claim before the RP only during the month of December 2020 and that the RP did not respond to the e-mails of the Applicants which have been sent thereafter. Hence, the Applicants have filed the present

Application seeking thereof to condone the delay in filing the claim before the RP and also sought for a direction to admit the claim of the Applicants.

11. The Learned Senior Counsel Mr. V. Ramakrishnan who appeared on behalf of the Respondent / Resolution Professional submitted that as per Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a "creditor" who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof of the IRP or the RP, as the case may be on or before the 90th day of the Insolvency Commencement date and hence in this regard it was submitted that the present Application would not be maintainable. Further, it was submitted by the Learned Senior Counsel that the IBC, 2016 is a self contained Code which sets out timeline and also the Resolution Plan in relation to the Corporate Debtor was approved by the Committee of Creditors on 22.01.2021 which is pending adjudication before this Tribunal and hence sought dismissal of the Application filed by these Applicants.

12. In reply to the said contention, the Learned Counsel for the Applicants placed reliance upon the Judgment of the Hon'ble Supreme Court in *Suo Moto Writ (Civil) No. 3 of 2020* wherein the Hon'ble Apex Court vide its order dated 08.03.2021 has excluded

the period from 15.03.2020 till 14.03.2021 in computing the period of limitation for any suit, appeal, application or proceedings and hence submitted that this Tribunal is well within its powers to condone the delay of the Applicants in filing the claim before the RP.

13. Heard the submissions made by the Learned Counsel for both the parties, it is seen from the records that these operational creditors were supplying dairy products and sea foods and other food products to the Corporate Debtor for a long time and as such they are Operational Creditors in relation to the Corporate Debtor. However, it is seen from the written submissions made by the Resolution Professional that after the initiation of the CIRP, the RP has taken steps to keep the Corporate Debtor as a going concern and many of the Trade Creditors who are the Applicants herein have supplied materials during the CIRP period and have also received payments for supply of such materials during the CIRP period. Further, it should be noted that the timelines as envisaged under the Code mandates CIRP to be completed within a period of 330 days and also timelines have been fixed for submissions of the claim by the creditors. Also it must be noted that the RP cannot perpetually accept the claims from the Creditors till the end of the CIRP period as it would defeat the very purpose of the Code. Further, the Trade Creditors who have supplied materials during

the CIRP period cannot plead ignorance as to the initiation of the CIRP in relation to the Corporate Debtor for non – submission of the claim in time. It is also pertinent to point out here that the Resolution Plan in relation to the Corporate Debtor is pending approval before this Adjudicating Authority and at this stage, if the prayers as sought by the Applicant is allowed it would amount to opening of a pandora box. Further, the Hon'ble Supreme Court while dealing with the admission of a claim, post approval of a Resolution Plan, in the matter of **Committee of Creditors of Essar Steel India Limited –Vs- Satish Kumar Gupta &Ors.** in *Civil Appeal No. 8766 – 67 of 2019* at para 67 has held as follows;

67. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. 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 successfully takes 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, the NCLAT judgment must also be set aside on this count.



14. Thus, for the aforesaid reasons, we are of the view that the claim of the Applicants in their capacity as a Trade Creditors / Operational Creditor in respect of the Corporate Debtor cannot be condoned at this belated stage especially when the Resolution Plan is approved by the CoC and is pending before this Tribunal. Accordingly, IA/247/CHE/2021, IA/248/CHE/2021, IA/446/CHE/2021, IA/447/CHE/2021 and Cont. A/03/CHE/2021 stands **dismissed**, without costs.

APPLICATION FILED BY FINANCIAL CREDITOR

(vi) IA/519/CHE/2021 – R. NATARAJAN

15. The Applicant herein who claims to be a Financial Creditor in relation to the Corporate Debtor has stated that he is having a claim of Rs.61,81,624/- and had submitted his claim in Form – C before the IRP on 03.08.2020 and despite submitting the claim, the IRP / RP has not acted upon it and has not taken any decision till date. Hence, the present Application has been filed to direct the Respondent / Resolution Professional to adjudicate and admit the claim of the Applicant and the declare the Resolution Plan, if any approved by the CoC without admitting the claim of the Applicant as void and *non – est* in law.



16. The Learned Counsel appearing on behalf of the Applicant submitted that after the initiation of the CIRP, the Applicant has submitted the claim before the IRP as early as on 03.08.2020 in Form – C for a sum of Rs.61,81,624/-, and also by e-mail on 10.09.2020 and it is the contention of the Learned Counsel for the Applicant that his claim was not adjudicated by the IRP / RP till this date.

17. The Learned Senior Counsel appearing on behalf of the Respondent submitted that no documentary evidence has been produced by the Applicant in order to show that he has submitted the claim before the IRP on 03.08.2020. It was submitted that only the Form – C was dated 03.08.2020; however the Applicant has not submitted the Form – C to the IRP. It was submitted that upon thorough verifications made by the RP in his e-mail and inbox, the e-mail dated 10.09.2020 as alleged to be sent by the Applicant was not received by the IRP / RP. Further, the Learned Senior Counsel contended that as per Regulation 12(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a “creditor” has to submit the claim on or before the 90th day of the Insolvency Commencement date. In the present case, the CoC was reconstituted on 16.12.2020 and that the Applicant did not choose any steps to follow with the claim submitted by him



and only on 21.01.2021, the Applicant was sending an e-mail to the Respondent seeking for his status of the claim.

18. Heard the submissions made by the Learned Counsel for the parties, in the present case it is seen that eventhough an averment has been made in the Application that the Applicant has filed the claim on 03.08.2020, the Applicant has not placed on record any documents in support of the same. Further, the e-mail as relied on by the Applicant was sent by him only on 10.09.2020; by this time the 90 days' period for submission of the claim was already over. In fact, it was also submitted by the RP that he has not received the mail dated 03.08.2020 sent by the Applicant. Thereafter, it is seen that after the mail dated 10.09.2020, the Applicant has slept over its rights and never made any follow up action with the RP as to the status of his claim and only on 21.01.2021, just one day before the 9th CoC meeting wherein the approval of the Resolution Plan was about to be discussed, the Applicant has sent an e-mail to the RP seeking for the status of his claim. It is also pertinent to point out here that the Resolution Plan in relation to the Corporate Debtor is pending approval before this Adjudicating Authority and at this stage, if the prayer as sought by the Applicant is allowed it would amount to opening of a pandora box. Further, the Hon'ble Supreme Court while dealing with the admission of a claim, post approval of a Resolution Plan, in the matter of **Committee of**



Creditors of Essar Steel India Limited (*supra*) has held that the successful Resolution Applicant cannot be suddenly faced with an 'undecided' claim, which would amount to an hydra head popping up.

19. Thus, for the aforesaid reasons, we are of the view that the claim of the Applicant in his capacity as Financial Creditor in respect of the Corporate Debtor cannot be condoned and accepted at this belated stage especially when the Resolution Plan is approved by the CoC and is pending before this Tribunal. Accordingly, IA/519/CHE/2021, stands **dismissed**, without costs.

20. In fine, all the Applications as arrayed in the cause title, for the reasons and discussions made *supra*, stands **dismissed**, without costs.

-sd-

(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-

(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond