

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

**IA No. 5742 of 2023
IN
C.P. (IB) No. 527/MB/2022**

Under Section 60(5) of the Insolvency and Bankruptcy
Code, 2016 read with Rule 11 of the National
Company Law Tribunal Rules, 2016

Dheeraj Reddy Jinna.

... Applicant

V/s

Vijay Kumar V Iyer

(Resolution Professional of Future Retail Ltd)

... Respondent

In the matter of

Bank of India

... Financial Creditor

Versus

Future Retail Limited

... Corporate Debtor

Order Delivered on :01.05.2024

Coram:

Hon'ble Member (Technical)

Mr. Anil Raj Chellan

Hon'ble Member (Judicial)

Mr. Kuldip Kumar Kareer

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Appearances:

For the Applicant : Adv. Aniruth Purusothaman

For the RP/Respondent : Adv. Rishabh Jaisani a/w Harit Lakhani

ORDER

Per: Coram

1. The present Application is filed by the Prospective Resolution Applicant (PRA) in the Corporate Insolvency Resolution Process (CIRP) of Future Retail Limited (Corporate Debtor). The Applicant is the Managing Director of Palguntech LLC. The Applicant seeks following prayers: -

- a) Pass an order directing the Respondent to share with the Applicant the information specified in Table A herein above and provide access to the Data Room to enable the Applicant to submit a Resolution Plan with a Financial proposal;
- b) Keep the Application for initiation of liquidation, filed by the Respondent in the matter of the Corporate Debtor, in abeyance till the disposal of the present Interlocutory Application;
- c) Interim and ad-interim orders in terms of Clauses (A) and (B) above;

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d) Any other orders as this Tribunal may deem fit and proper.

Brief facts leading the present Application

2. The CIRP of the Corporate Debtor was initiated vide Order dated 20.07.2022 pursuant to an Application filed by Bank of India under Section 7 of the Insolvency and bankruptcy Code, 2016 (Code).
3. Pursuant to the initiation of CIRP, publication of Form- G inviting Expression of Interest (Eol) from the Potential Resolution Applicants dated 04.10.2022 was published by the Respondent and the last date for submission of Eol was 20.10.2022.
4. Meanwhile, the Applicant herein vide email dated 20.10.2022 expressed his desire to submit the Resolution Plan for the Corporate Debtor. The Respondent once again issued Form-G inviting Eol dated 23.03.2023 and the last date for submission of an Eol was 07.04.2023.
5. Pursuant to reissuance of the invitation of the EoI, the Applicant sent an email dated 05.04.2023 to the Respondent thereby attaching copy of Eol and also attached a joint undertaking with one Mr. Prabhakar Reddy under Section 29A of the Code along with confidentiality undertaking.

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6. The Applicant vide email dated 11.04.2023 sent to the Respondent, expressed his objection for inclusion of name of "Reliance Retail Ventures Limited" in the list of Prospective Resolution Applicants (PRAs). The Applicant in the said aforesaid letter detailed its objections about the inclusion of name of "Reliance Retail Ventures Limited" and relied on the documents submitted by the Corporate Debtor to the National Stock Exchange.
7. Further, the Applicant vide emails dated 23.04.2023 and 25.04.2023 sought information from the Respondent about the stores of the Corporate Debtor taken over by Reliance. The Applicant again vide emails dated 19.07.2023, 20.07.2023 21.07.2023 and 02.06.2023 sent to the Respondent sought for the updated information request sheet. However, the Respondent did not provide the required information. The information sought by the Applicant from the Respondent is tabulated hereunder as Table A :-

Sr. No.	Date of request	Information sought
1.	23.04.2023	Details of Inventory lying in the 835 stores for which Reliance Group terminated the lease arrangement and took over possession at the time of termination of sublease agreements with Reliance Group. Also requested details of the realization of inventory and other store infra-assets after Reliance took possession of stores.

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2.	25.04.2023	Status related to copies of NOC from lenders of Corporate Debtor before selling off store infra-assets to the Corporate Debtor worth Rs. 3559 Crore.
3.	25.04.2023	SIAC (Singapore International Arbitration Court) Order that stayed the Corporate Debtor to sell any assets to Reliance.

8. The Applicant states that the status of inventory lying in 835 stores of the Corporate Debtor and its valuation/details were missing and were not available from the data site document. In view of non-availability of the details, no financial proposal could be submitted by the Applicant as crucial information with regards to the Material Information lying in the stores (Operational/Non-Operational), ware houses, status of Operational stores till date, were not available.

9. Hence, it was not possible for the Applicant to determine a price for the Corporate Debtor in absence of material/critical information which was not supplied by the Respondent. Due to lack of information, the Applicant was constrained to submit a Resolution Plan without a Financial proposal and consequently the members of the CoC did not consider the Resolution Plan submitted by the Applicant. The access to the data site was also disabled by the

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Respondent and hence was difficult for the Applicant to get the actual information about the stores, which were being operated by the Corporate Debtor.

10. Hence, the Applicant hereby seeks directions to be given to the Respondent to share the information as sought by the Applicant as stated above in Table A, to provide access to the data room and to keep the liquidation Application filed by the Respondent in abeyance.

11. The Respondent have chosen not to file reply.

FINDINGS

12. We have heard the Counsel for the Applicant and Counsel for the Respondent/RP and have gone through records.

13. It has been agitated by the Counsel for the Applicant that the required information with regard to inventories lying in the 835 stores of the Corporate Debtor was not supplied to the Applicant by the RP. The Counsel for the Applicant has further argued that email dated 23.04.2023 and 25.04.2023 were sent to the Respondent seeking information about the store of the Corporate Debtor which are said to have been taken over by Reliance. The Applicant further sent many more emails in the month of June and July, 2023 seeking updated information from the RP which are very vital for the Applicant to submit its Resolution Plan.

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14. Per contra, the Counsel for the RP during the arguments furnished a compilation of documents not attached to the Application which contained inter alia, emails dated 15.04.2023 and 28.04.2023 issued by the Respondent/RP. As per the email dated 15.04.2023, the RP had provided access to a link of details of assets (inventory, PPE and other assets) of the Corporate Debtor about stores whose physical possession was taken over by Reliance Group and moved over to warehouses before initiation of CIRP of Corporate Debtor to all PRAs including the Applicant. The details provided in the link included a list of article-wise quantity of inventory/other assets along with book values as provided by Corporate Debtor and the actual quantity physically verified by Reliance Projects & Property Management Services Limited and certified through independent Chartered Accountancy Firms of each store. Further, RP vide his email dated 28.04.2023, informed PRAs that in case any PRA is interested in reaching out to Reliance in respect of these stores, they can do so at their end, if deemed fit by such PRA.

15. The above emails stated to have been issued by Respondent/RP have not been denied by the Applicant. Furthermore, it was stated therein that the subleases in respect of 835 stores were terminated before the initiation of CIRP and hence those assets do not form part of the Clusters as set out in RFRP/EoI. Access to data as is available was provided by the Respondent to the Applicant. In the circumstances, we do not see merit in the argument tat vital data for submission of financial proposal was not provided to the Applicant.

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16. As regards the Resolution Plan stated to be submitted by the Applicant, the Counsel for the Respondent has drawn our attention to the email dated 15.05.2023 which stated :

Our resolution plan is “Requesting IRP to accept Mr. Biyani’s resignation and announce me publicly as his replacement”

17. The Counsel pointed out that the above mail is also issued from email id :- dheeraj@palguntech.com by Palguntech LLC and not by the Applicant. The 19th meeting of the CoC also considered the proposal of the Applicant and recorded that no financial proposal was received from Palguntech and the same cannot be considered as being either a Resolution Plan or Resolution bid. Accordingly, those bidders have not been invited and stand excluded from the Resolution Plans/ bid process at this stage.

18. Hence, we are of the considered view that the present Application filed by the Applicant is without any merit. In this case, admittedly the CoC has already passed a Resolution for initiation of Liquidation of the Corporate Debtor and in this regard an Application has already been filed by the RP. It is well settled and also been held in *Arcelormittal india Ltd. vs. Satish Kumar Gupta (2019) 2 SCC 1* that the resolution applicant has no vested right that his Resolution Plan be considered, further that no challenge can be preferred to the Adjudicating Authority by such Applicant. Therefore, on the ground that the Applicant was incapacitated to

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submit the Resolution Plan for want of some more information is not sustainable nor any financial proposal much less a Resolution Plan was submitted by the Applicant within the time frame. In the light of the above brief discussion the present Application **5742 of 2023 is dismissed, being devoid of any merit.**

Sd/-

**ANIL RAJ CHELLAN
MEMBER (TECHNICAL)**

Sd/-

**KULDIP KUMAR KAREER
MEMBER (JUDICIAL)**