

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH,**  
**COURT III**

**I.A. 539/2023**

**IN**

**C.P.(IB)-2915/(MB)/2019**

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

***Filed by,***  
**M/s. Agarwal Fuel Corporation Private Limited**

Bearing CIN U45203MP1980PTC001674

Registered Office at: Agarwal House, 5, Yeshwant Colony, Indore, Madhya Pradesh-452003

Acting through its Whole Time Director

Mr. Pradeep Upadhyay.

**.....Applicant**

**Vs**

**Mr. Anuj Jain**

Resolution Professional of M/s. Ballarpur Industries Limited office address at 8<sup>th</sup> Floor, Building No. 10, DLF Cyber City, Phase II, Gurgaon, Haryana-122002.

**.....Resolution Professional/Non-Applicant**

***In the matter of***  
**M/s. Finquest Financial Solutions Private Limited**

Having registered office at 602, Boston House, Near Cinemax, Suren Road, Andheri (East), Mumbai-400093.

.....**Financial Creditor**

**Vs**

**M/s. Ballarpur Industries Limited**

Having registered office at P.O. Ballarpur Mills,  
Chandrapur, Ballarpur, Maharashtra-442901.

..... **Corporate Debtor**

Reserved for order on: **23.03.2023**

Order pronounced on: **31.03.2023**

**Coram:**

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Madhu Sinha, Member (Technical)

**For the Applicant:**

**For the Resolution Professional:**

**Per: Madhu Sinha, Member (Technical)**

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**ORDER**

1. The above Interlocutory Application is filed by Applicant, *M/s. Agarwal Fuel Corporation Private Limited*, (hereinafter referred as Applicant) Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 praying for following reliefs:
  - a. *By directing the Resolution Professional/Non-Applicant for reconsideration of the claim of the applicant amounting to Rs.42,84,601.78/- (Rupees Forty Two Lakh Eighty Four Thousand Six Hundred One and Seventy Eight Paise) on its merit.*
  - b. *By directing the Resolution Professional/Non-Applicant not to reject the claim of the applicant solely on the ground of delay and laches.*
  - c. *To pass any order as this Hon'ble Tribunal may deem fit and proper to secure the ends of justice.*

**2. The brief facts behind filing the above application are as follows:**

- i. The Applicant (M/s. Agarwal Fuel Corporation Private Limited) was incorporated on 23.10.1980 under the provisions of Companies Act, 1956, is engaged in the business of supply and trade in range of coal and provides for transportation, logistics and chain management solutions.
- ii. The Applicant had supplied coal to Corporate Debtor (M/s. Ballarpur Industries Limited) during 01.11.2018 to 13.11.2018 aggregating to Rs. 2,64,47,623.18/- (Rupees Two Crore Sixty-Four Lakhs Forty-Seven Thousand Six Hundred Twenty-Three and Eighteen Paise) and in respect of the said transactions, the Corporate Debtor made payment aggregating to Rs. 2,21,63,021.40/- (Rupees Two Crore Twenty-One Lakhs Sixty-Three Thousand Twenty-One and Forty Paise) to Applicant leaving an outstanding amount of Rs.42,84,601.78/- (Rupees Forty-Two Lakh Eighty-Four Thousand Six Hundred One and Seventy-Eight Paise) against the goods supplied.
- iii. Due to non- receipt of said amount, the Applicant contacted counsel, wherein it was informed by the counsel that the Hon'ble Tribunal vide order dated 17.01.2020 and had admitted the Corporate Debtor to Corporate Insolvency Resolution Process (CIRP).
- iv. The Applicant has submitted its Claim in "*Form B Proof of Claim by Operational Creditors Except Workmen And Employees [Under Regulation 7 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016]*" on 14.10.2022 along with all documents before Resolution Professional/Non- Applicant.
- v. The Applicant received an e-mail stating that "*At this stage the undersigned is not in a position to process your claim or take any decision in that regard*" on 17.10.2022.

vi. The present application is being filed by the applicant. before this Hon'ble Tribunal aggrieved from the rejection of claim by Resolution Professional and for seeking appropriate directions under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with rule 11 of National Company Law Tribunal Rules, 2016.

**3. Respondents filed detailed reply opposing the above application. The Paras of the reply of the Corporate Debtor are mentioned here under:**

- i. The instant Application has been filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ("IBC") read with Rule 11 of the National Company Law Tribunal Rules, 2016 ("NCLT Rules") seeking directions against the Resolution Professional ("RP") of the Corporate Debtor to admit the admittedly belated claim filed by the Applicant.
- ii. At the outset, it is submitted that contentions and averments raised in the Application, unless specifically admitted in the following paragraphs, may kindly be deemed to have been specifically traversed and denied. The Respondent reserves the right to file a para wise response to the Application, if required.
- iii. It is most respectfully submitted that it is an admitted position that the Applicant has filed operational claim ("Form B") dated 02.11.2022 In this context, it is imperative to highlight the following dates:

<b>S. No.</b>	<b>Date</b>	<b>Event</b>
1.	17.01.2020 <b>(Insolvency Commencement Date)</b>	This Hon'ble Tribunal passed an order for initiation of corporate insolvency resolution process (" <b>CIRP</b> ") against the Corporate Debtor.
2.	23.01.2020 <b>(Public Announcement)</b>	In accordance with the Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 (" <b>CIRP Regulations</b> "), public announcement inviting claims against the Corporate Debtor was made

		in the newspapers. Additionally, the public announcement was also uploaded on the website of the Corporate Debtor.
3.	16.04.2020	The 90-day period as provided under the Regulation 12(2) of CIRP Regulations stood expired.
4.	21.05.2021 <b>(First Resolution Plan)</b>	Finquest Financial Solutions Private Limited (" <b>Finquest</b> ") submitted its resolution plan (" <b>1<sup>st</sup> Plan</b> ")
5.	24.08.2021	The RP published a revised list of claims submitted by the operational creditors. Notably, the said date was considered as a cut-off date for consideration of claims in the resolution plans.
6.	01.09.2021	The 1 <sup>st</sup> Plan was revised for consideration of the Committee of Creditors (" <b>CoC</b> ").
7.	16.09.2021	1 <sup>st</sup> Plan was updated by Finquest and submitted for consideration of CoC.
8.	20.09.2021	23 <sup>rd</sup> CoC meeting was conducted. 1 <sup>st</sup> Plan was put for voting and was rejected by CoC ( <i>voting was concluded on 7.10.21</i> )
9.	25.01.2022 <b>(Liquidation IA)</b>	The Hon'ble Tribunal allowed I.A. No. 2510/2021 (order was uploaded on the website of NCLT on 22.02.2022) (" <b>Liquidation Order</b> ").
10.	08.02.22 <b>(2<sup>nd</sup> Resolution Plan)</b>	Before Liquidation Order could be made available on official website of NCLT, Finquest submitted a revised resolution plan dated 07.02.2022 (" <b>2<sup>nd</sup> Plan</b> ").
11.	07.03.22	The Appellate Tribunal passed an order in Company Appeal No. 227 of 2022 staying the Liquidation Order and directed the CoC to reconsider the 2nd Plan within a period of 6 weeks.
12.	22.3.22	26 <sup>th</sup> CoC meeting was conducted wherein the 2 <sup>nd</sup> Plan (with certain modifications) was put for voting.
13.	14.04.2022 <b>(CoC Approval)</b>	CoC approved 2 <sup>nd</sup> Plan with 88% majority on 14.04.2022.

14.	21.04.2022	Letter of Intent was issued to Finquest.
15.	28.04.2022 <b>(Plan Approval IA)</b>	IA No. 1143 of 2022 was filed by RP for approval of 2 <sup>nd</sup> Plan along with compliance certificate in Form 'H'. The said IA is pending for adjudication before the Hon'ble Tribunal
16.	14.10.2022	The Applicant submitted its operational claim of INR 42,84,601.78/- (Indian Rupees Forty Two Lakh Eighty Four Thousand Six Hundred One and Seventy Eight Paise) (" <b>Form B</b> ") to the RP.
17.	17.10.2022	<p>The Respondent issued an email to the Applicant wherein the following points were highlighted:</p> <ol style="list-style-type: none"> <li>a) As per regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("<b>CIRP Regulations</b>"), IRP made a public announcement on 23.01.2020 inviting claims from the creditors of BILT.</li> <li>b) The last date of submission of claim was 06.02.2020.</li> <li>c) The public notice was published in dail newspaper [i.e., Financial Express- English- All India Edition, Jansatta- Hindi Delhi/NCR Edition, Dainik Tribune- Hindi Yamuna Nagar, Haryana (Karnal edition), Surya- Telgu- Warangal Edition, Sakai- Marathi- Chandrapur, Maharashtra Edition, Pratidin- Oriya], website of Insolvency and Bankruptcy Board of India and website of BILT.</li> <li>d) The claims filed by the Applicant pertains to pre Corporate Insolvency Resolution Process ("<b>CIRP</b>") period.</li> <li>e) As per regulation 12(2) of the CIRP Regulations, a creditor is mandated to may submit its claim along with relevant documents, on or before the 90<sup>th</sup> day of the insolvency commencement date.</li> <li>f) In the present case, the 90 days period for submission of claims expired on 16.04.2020.</li> <li>g) Therefore, at this stage the belated claim filed by the cannot be processed/ accepted.</li> </ol>

- iv. It is humbly submitted that the Applicant has stated COVID-19 as a ground for delay in filing the Form B. It is the case of the Applicant that on account of operational impediments faced by the Applicant the relevant information regarding initiation of CIRP could not be gathered by the Applicant. In this context it is respectfully submitted that:
- (a) The IRP had made the required statutory announcement/disclosures regarding initiation of CIRP of the Corporate Debtor vide public announcement dated 23.01.2020 in multiple newspapers such as - (a) Financial Express (English -All India edition), Jansatta (Hindi - Delhi/ NCR edition), Dainik Tribune (Hindi - Yamunanagar, Haryana, Karnal edition), Surya (Telgu - Warangal edition), Sakal (Marathi-Chandarpur, Maharashtra edition), Pratidin (Odiya-Bhubaneshwar edition).
  - (b) In addition to the above, the abovementioned public notice was also updated on the website of IBBI and the website of the Corporate Debtor.
  - (c) As per Regulation 12(2), the Applicant was statutorily mandated to submit its claim by 16.04.2020 i.e., within 90 days of insolvency commencement date (17.01.2020).
  - (d) In the interest of benefit of the operational creditors and considering that the above said timeline is directory in nature the RP had admitted operational claims up till 24.08.2021.
  - (e) The Applicant has been sleeping over its statutory rights. The Applicant has woken up after the 2<sup>nd</sup> Plan has been approved by the CoC on 14.04.2022 and the IA for approval of 2<sup>nd</sup> Plan (i.e., IA No. 1143 of 2022) has been filed by the RP before the Hon'ble Tribunal on 28.04.2022.
- v. It is humbly submitted that the maxim *vigilantibus non dormientibus jura subveniunt* is squarely applicable in the present

set of facts. As per the above said maxim, law does not come to the aid of those who sleep over their rights. The above stated legal position has been fortified by the Apex Court in **H. Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd., [(2015) 1 SCC 680]** ("**Nahar Exports Case**"). The relevant excerpt has been quoted below:

*"20. In the case on hand, the delay in refiling was of 1727 days. As rightly pointed out by the learned Senior Counsel for the appellant(s), the respondents paid the scrutiny charges on 11-4-2008 as disclosed in Receipt No. 73 issued by the High Court of that date. When the appeal papers were filed on 6-9-2007 and the scrutiny charges were paid on 11-4-2008, it was quite apparent that the processing of papers of the appeals for its registration did commence in the month of April 2008. Thereafter, if rectification of whatever defects were not carried out by the respondents or its counsel between April 2008 and May 2012, it is the bounden duty of the respondents to have satisfactorily explained such a long delay in refiling. When we refer to the applications filed on behalf of the appellant(s), we find that there was no convincing explanation as to how the respondents were disabled from rectifying the defects pointed out by the Registry and refiling the appeal papers within time. The respondents only attempted to throw the blame on the previous counsel to whom appeal papers were entrusted for filing in September 2007. As pointed out by the learned Senior Counsel for the appellant(s), there were no details as to whom it was entrusted and what were the steps taken to ensure that the appeals filed were duly registered for pursuing further remedy as against the said judgment of the trial court. As a matter of fact the appeal papers were filed without payment of any court fee. This only affirms the stand of the appellant(s)*

*that there was no bona fide in the respondents' claim and that they were seriously interested in challenging the judgment of the trial court as against the non-grant of relief of specific performance. We also fail to see as to how Respondent 1 which is a limited company involved in the business of exports, which would certainly have its own legal department, can plead that after entrusting the papers to some counsel whose name was not disclosed even before this Court did not even bother to take any follow-up action to ensure that its appeals were duly registered in the High Court. **In this context the maxim vigilantibus non dormientibus jura subveniunt (law assists those who are vigilant and not those who sleep over their rights) aptly applies to the case on hand.** The respondents simply by throwing the blame on the previous counsel whose identity was not disclosed claimed that irrespective of the enormous delay of 1727 days in refiling the same should be condoned as a matter of course as there was only 9 days' delay involved in filing the appeals."*

- vi. At this juncture, it is imperative to highlight that Applicant has relied upon an order dated 06.06.2019 passed by the National Company Law Tribunal, New Delhi (Principal Bench) ("NCLT Delhi") passed in ***Edelweiss Asset Reconstructions Company Private Limited vs. Adel Landmarks Limited*** wherein NCLT Delhi has directed the RP to admit the delayed claims filed by the applicant therein on the ground that provisions relating to timeline for filing the claim have been declared as directory. In this context, reference is invited to settled legal position that belated claims filed by the creditors pursuant to approval of the CoC cannot be entertained. Reference is invited to the following judgments/ orders passed by Hon'ble Appellate Tribunal/ this Hon'ble Tribunal:

**(a) Harish Polymer Product vs. George Samuel and Anr. [Company Appeal (AT) (Insolvency) No. 420 of 2021] ("Harish Polymer Case"):**

- (i) In the Harish Polymer Case, an operational creditor had approached the Hon'ble Appellate Tribunal challenging the rejection order passed by the appropriate Adjudicating Authority on the ground that the operational creditor did not know about the CIRP initiated against the Corporate Debtor therein.
- (ii) The Hon'ble Appellate Tribunal declined to interfere in the matter on the ground that new claims cannot be entertained at such a belated stage when the resolution plan has already been approved by the CoC.
- (iii) It was further upheld that entertaining such claims would defeat the purpose of the IBC to conclude the process in a time bound manner. The relevant excerpts of the order dated 18.06.2021 are quoted below:

*"4. Counsel for the Resolution Professional submits that the claim filed was delayed. **It is also stated that the CIRP is now at the stage where the Resolution Plan has already been approved by the Committee of Creditors and the same has been filed before the Adjudicating Authority for approval.***

.....

**10. We find that the reasons recorded by the Adjudicating Authority have substance and if at belated stage when the Resolution Applicants are already before the Committee of Creditors with their Resolution Plan(s) if new claims keep popping up and are entertained, the CIRP would be**

**jeopardized and Resolution Process may become more difficult. Keeping in view the object of the 'I&B Code' which is Resolution of the Corporate Debtor in time bound manner to maximize value, if such requests of applicants like Appellant are accepted the purpose of 'I&B Code' would be defeated.**

*11. We do not find any reason to interfere with the impugned order. There is no substance in the Appeal. We decline to admit the Appeal.*

**(b) Mukul Kumar, RP of KST Infrastructure Ltd. vs. RPS Infrastructure Ltd. [Company Appeal (AT) (Insolvency) No. 1050 of 2020] ("KST infrastructure Case"):**

- (i) In KST Infrastructure Case, the creditor had submitted a claim of Rs. 35,67,05,337 after a delay of 287 days to the RP. The said claim was based on the arbitral award dated 01.08.2016 which had been confirmed by the Additional District Judge Gurgaon *vide* order dated 25.04.2019.
- (ii) The RP therein had rejected the said claim on the ground that Resolution Plan has been put for voting before CoC. The said rejection was challenged by the creditor before the Adjudicating Authority.
- (iii) The Adjudicating Authority had directed the RP to consider the claim filed by the creditor, however, the Hon'ble Appellate Tribunal *vide* judgment dated 30.07.2021 declined to condone the delay of 287 days on the ground that CoC had already approved the resolution plan. The relevant excerpt of the judgment dated 30.07.2021 is quoted below:

"35. With the aforesaid we are of view that the Ld. Adjudicating Authority has erroneously directed the RP to consider the claim of the Respondent which is apparently filed after a delay of 287 days, before that the CoC has already approved the Resolution Plan. Thus, the impugned order is not sustainable in law, therefore, it is hereby set aside and the Appeal is allowed. however, no order as to costs."

- (iv) It is humbly submitted that the judgment passed in the KST Infrastructure Case has been challenged before the Hon'ble Supreme Court in C.A. No. 5590 of 2021. However, no stay order has been passed by the Apex Court on the judgment dated 31.07.2021.

**(c) Castle Distributor Private Limited and Ors. vs. Vivek Murlidhar Dabhade [M.A. No. 3477/2019 in CP No. 2956/2018] ("Castle Distributor Case"):** In the Castle Distributor Case, the Hon'ble Tribunal had relied upon the legal maxim *Vigilantibus Et Non Dormientibus Jura Subveniunt* and declined to entertain admission of claim submitted in a delayed manner after the approval of the CoC. The relevant excerpt of the order dated 11.11.2019 has been quoted hereunder:

**"18. Furthermore, it is a well-established principle of law "Vigilantibus Et Non Dormientibus Jura Subveniunt" which means the law assists those that are vigilant with their rights, and not those that sleep thereupon. The Applicant had very conveniently decided to sleep over his right from October 2019. It is only at this ripe stage when the CoC has already approved the Resolution Plan that the Applicant suddenly decided to make his claim again."**

- vii. In light of the foregoing, it is submitted that the operational claim filed by the Applicant is hopelessly delayed. Therefore, in terms of the legal position fortified by the Hon'ble Supreme Court in Nahar Exports Case, legal position affirmed by the Hon'ble Appellate Tribunal in Harish Polymer Case and KST Infrastructure Case and the legal position fortified by this Hon'ble Tribunal in Castle Distributor Case, the present IA deserves to be rejected.
- viii. In view of the foregoing, it is submitted that present Application is devoid of merits and seeks to misdirect and abuse the proceedings before this Hon'ble Tribunal. Therefore, it is most respectfully prayed that the reliefs sought by the Applicant in the instant Application may be denied and the same may be dismissed with exemplary costs.

#### **FINDINGS**

4. Heard the learned counsels on both the sides and perused the record.
5. After hearing the submissions of both sides, this Bench observed that the RP has rejected the claim of the Applicant mainly on the ground of Excessive Delay in submission of Operational Claim by the Applicant.
6. The claim of the Applicant is based on supply of imported coal from by the Applicant to the Corporate Debtor during the period starting from 01.11.2018 to 13.11.2018. The CIRP order was passed against the Corporate Debtor on 17.01.2020 and on 23.01.2020 the RP made public announcements to this effect as per process laid down under the Code/ Rules. The Applicant is miserably delayed in filling his claim before the RP as he filed his claim only on 14.10.2022 i.e., after almost 911 days from the date of mandated period for submission (i.e., 16.04.2020). Further, the Applicant filed this Interlocutory Application on 12.12.2022 i.e., after 1060 days from the date of mandated period for submission of claim (i.e., 16.04.2022). The RP performed his duty by reflecting the claim of the applicant in the information memorandum as disputed and pending Adjudication by this Bench. It

- is also appropriate to mention here that a Resolution Plan for the Corporate Debtor has been duly approved by the COC on 14.04.2022.
7. After hearing the arguments of both the side and running through the judgement cited on both the sides, this Bench did not find any illegality or irregularity committed by the RP in rejecting the above mentioned claims of the Applicant. This Bench is in complete agreement with the action of the RP in rejecting the claim.
  8. Further, the reasoning contend by the Applicant in his argument for delay in filing the claim of COVID-19 is not viable to be accepted and it is clear failure on the part of the Applicant that he was not vigilant of his legal rights and in view of law laid down by Hon'ble Supreme Court that of "*law does not come to the aid of those who sleep over their rights*" in the matter of *H. Dohil Constructions Co. (P) Ltd. v. Nahar Exports Ltd.*, [(2015) 1 SCC 680] ("*Nahar Exports Case*") this Bench cannot come to the rescue of those who are sleeping over there rights or are not duly aware of their rights.
  9. It is also appropriate to mention here that the Resolution Plan for the Corporate Debtor duly approved by the COC, is pending before this Tribunal and Reserved for Orders on 10.01.2023. This Interlocutory Application firstly came on board only on 15.02.2023.
  10. This Bench further states that just for the dissatisfaction of the Applicant as their claim is rejected the whole process of CIRP of a Corporate Debtor cannot be stayed, as every creditor whose claim is validly or invalidly rejected can approach the Adjudicating Authority for presenting their case as provided under the provisions of the Code and entertaining such claims would defeat the purpose of the IBC to conclude the process in a time bound manner.

11. For the aforesaid reasons, this bench finds no merit in the above application. Accordingly, the above **I.A. 539/2023 is rejected and disposed of.**

**Sd/-**

**MADHU SINHA  
MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**I.A. 3746 OF 2022**

**IN**

**C.P. No. 2915 of 2019**

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

Filed by

**Shri Siddhi Vinayak Minerals,**

Through its proprietor,

Shri Vinod Kumar Garg

**Having address at:**

Behind Indane Gas Plant, Village –  
Bacchipur, P. O. – Motahaldu, Haldwani,  
Nainital, Uttarakhand - 263139

**...Applicant**

Versus

**Mr. Anuj Jain**

Resolution Professional

M/s Ballarpur Industries Limited

C/o BSRR and Co.

Building No. 10, 8<sup>th</sup> Floor, Tower C, DLF  
Cyber City, Phase II, Gurugram - 122022

**...Respondent**

**In the matter of  
C.P. No. (IB) 2915/ MB/2019**

**M/s. Finquest Financial Solutions Pvt. Ltd.**

**...Financial Creditor**

**Versus**

**Ballarpur Industries Limited**

**...Corporate Debtor**

**Order Reserved on: 11.01.2023**

**Order delivered on: 31.03.2023**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Madhu Sinha, Member (Technical)

**Appearance:**

**For the Applicant:** Mr. Harsh Kesharia, Advocate

**For the Respondent:** Mr. Yashish Chandra, Advocate a/w  
Mr. Somesh Srivastava, Advocate and  
Mr. Ramakant Rai, Advocate

***Per: Madhu Sinha, Member (Technical)***

**ORDER**

1. The above Interlocutory Application is filed by Applicant, *Shri Siddhi Vinayak Minerals*, (hereinafter referred as Applicant) Under Section 60(5) of Insolvency & Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 praying for following reliefs:
  - i. Allow the present Application;*
  - ii. Condone the delay in filing the claim before the Resolution Professional;*
  - iii. Direct the Resolution Professional to receive the claim of the Applicant herein and thereafter verify and consider the same on merits;*
  - iv. Include the name of the Applicant in the list of creditors with respect to the Corporate Debtor;*
  - v. Any other order and/or direction this Hon'ble Tribunal deems fit and proper in the interest of Justice.*

**The submissions of the Applicant are mentioned below:**

2. That the present application is being filed by the Applicant under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') as well as under Rule 11 of the National Company Law Tribunal Rules, 2016 as the applicant herein is aggrieved by the refusal of the Respondent (hereinafter referred to as the “Resolution Professional”) to consider, process and take a decision on the claim of the Applicant on the ground that the claim was filed belatedly. The Applicant herein prays to this Tribunal to direct the Resolution Professional to consider the claim so filed by Applicant herein on merits.
3. It is stated by the Applicant that a Purchase Order No. 34857/22/0 was placed by the Corporate Debtor upon the Operational Creditor/ Applicant on 12.11.2015 for 5000 MTS of soap stone power. Total amount for the said purchase was Rs. 3,87,60,000/- (Rupees Three Crore Eighty Seven Lakhs and Sixty Thousand only).
4. In between 2015-2019, certain payments were made pertaining to purchase order by the Corporate Debtor and as per ledger balance there was an outstanding amount of Rs. 35,17,045.19/- (Rupees Thirty Five Lakhs Seventeen Thousand Forty Five and Nineteen Paisa only) which was due and payable by the Corporate Debtor to the Applicant. The last payment was made by the Corporate Debtor on 20.05.2019. Thereafter the amount of Rs. 35,17,045.19/- (Rupees Thirty Five Lakhs Seventeen Thousand Forty Five and Nineteen only) was outstanding and payable by the Corporate Debtor to the Applicant herein as is clear and substantial from the ledger account.
5. Even after repeated requests, reminders were made for outstanding payments through emails, personal visits, however no payments were made.

6. It is further stated that the Applicant in pursuance of its legal remedies and falling under MSME filed a claim before the Uttarakhand State Micro and Small Enterprises Facilitation Council, Dehradun (hereinafter referred to as "Council") on 01.11.2019.
7. The Conciliation proceedings were initiated and notices were issued by the council to the Corporate Debtor. On 20.12.2019, fifteen (15) days notice was served upon the Corporate Debtor, on 19.02.2020 notice was sent again by council to the Corporate Debtor, on 13.05.2020 final notice was served upon the Corporate Debtor. However despite notices none appeared and conciliation failed.
8. Further, as the conciliation proceedings failed the arbitration proceedings were initiated by the Council. On 12.07.2021, notice in respect of Arbitration proceedings was issued by the council to both the parties i.e., Corporate Debtor and the Applicant. On 10.08.2021, the Applicant/ Operational Creditor also got published an advertisement of this intent in a newspaper as per the instructions of the Council.
9. It is further stated that despite the above notice none appeared before the Council for the Corporate Debtor. The Council after examining the pleadings, evidence and the documents on record passed an award for Rs. 1,03,60,811/- (Rupees One Crore Three Lacs Sixty Thousand Eight Hundred and eleven only) on 13.05.2022 in favour of the Applicant/ Operational Creditor and against the Corporate Debtor. This includes [Rs. 35,17,045/- (Rupees Thirty Five Lacs Seventeen Thousand and Forty Five only) towards due outstanding of the delivery notes/ invoices & Rs. 68,31,271/- (Rupees Sixty Eight Lacs Thirty One Thousand Two Hundred and Seventy One only) and Rs. 12,495/- (Rupees Twelve Thousand Four Hundred Ninety Five only)].

10. The fact of receipt of Notice by the Resolution Professional has been recorded by the Council in its Award dated 13.05.2022 in favour of the Applicant. On receipt of the award, the Applicant started the process of initiating execution proceedings against the Corporate Debtor. It is at this stage and time that the Applicant came to know about the admission of the Petition under Section 7 of the Code, declaration of a moratorium and initiation of CIRP process against the Corporate Debtor, and appointment of a Resolution Professional (RP).
11. The Applicant thereafter filed its claim before the RP on 19.09.2022 which was rejected on 10.11.2022 by RP citing belated submission of claim as the reason for rejection. Hence, the present application.

**The Respondent /Resolution Professional filed a detailed reply opposing the above application the contents of which are summarized as under:**

12. It is relevant to mention herein that the Applicant has filed Operational Claim (Form B) dated 08.09.2022 by way of email dated 19.09.2022. Thus, the RP was provided with the copy of Form B along with supporting documents only on 19.09.2022.
13. The Applicant has submitted Form B in an excessively delayed manner, subsequent to filing of the application for approval of Resolution Plan by the RP. As per Regulation 12(2), the Applicant was statutorily mandated to submit its claim by 16.04.2020 i.e., within 90 days of insolvency commencement date (17.01.2020). It is further mentioned that in interest of benefit to the Operational Creditors the RP had admitted operational claims up till 24.08.2021. The said claims were duly considered in the 1<sup>st</sup> plan dated 21.05.2021 (updated on 16.09.2021) and the 2<sup>nd</sup> Plan dated 07.02.2022.

14. However, the applicant filed Form B only on 19.09.2022 which was rejected by the RP on 11.11.2022 and the instant application against the rejection of the claim was filed only on 16.12.2022 which is almost 1064 days from the date of statutorily mandated to submit its claim.
15. The Respondent states that the Applicant's claim that he was not aware about the initiation of CIRP is false and baseless. The RP made the required statutory announcement/ disclosures regarding initiation of CIRP of the Corporate Debtor vide public announcement dated 23.01.2020 in multiple newspapers such as – (a) Financial Express (English – All India Edition), (b) Jansatta (Hindi – Delhi/ NCR Edition), (c) Dainik Tribune (Hindi – Yamunagar, Haryana, Karnal Edition), (d) Surya (Telgu – Warangal Edition), (e) Sakal (Marathi – Chandrapur, Maharashtra Edition) and (f) Pratidin (Odiya – Bhubaneshwar Edition). In addition to the above public notice was also updated on the website of IBBI and the website of the Corporate Debtor.
16. It is further submitted by the RP that admittedly the Operational Claim filed by the Applicant is premised upon the arbitral award passed on 13.05.2022 by the Uttarakhand State Micro and Small Enterprise Facilitation Council (“State MSME Council”). The State MSME Council had undertaken conciliation proceedings and notices were issued to the Corporate Debtor on 20.12.2019, 19.02.2020 and 13.05.2020. Thereafter, the notice for arbitration proceedings was issued on 12.07.2021.
17. It is further submitted that this Tribunal initiated CIRP against the Corporate Debtor vide order dated 17.01.2020. The tribunal while initiating CIRP against the Corporate Debtor had also imposed moratorium under Section 14 read with Section 13 of the Code. As per Section 14(1) of the Code, all authorities are precluded from initiating continuing proceedings against a Corporate Debtor during the period of moratorium.

18. It is further stated that due to lack of proper disclosure on part of the Applicant, conciliation proceedings were continued at the State MSME Council in contravention to the mandate of Section 14(1)(a) of the Code. Moreover the said contravention was further continued when notice for arbitration award dated 13.05.2022 was passed in favour of the Applicant. At the cost of repetition it is highlighted that the operational claim filed by the Applicant is entirely premised upon the arbitral awards dated 13.05.2022. As the arbitration award has been passed in violation of Section 14 of the Code, the claim filed by the Applicant premised on the above award cannot be accepted.

### **FINDINGS**

19. Heard the learned counsels on both the sides and perused the record.
20. After hearing the submissions of both sides and upon perusing the material available on record, this Bench observed that the RP has broadly rejected the claim of the Applicant mainly on the following grounds:
- i. Excessive Delay in submission of Operational Claim by the Applicant; and;*
  - ii. The arbitral award in favor of the Applicant is inadmissible on account of applicability of Section 14 of the IBC Code.*
21. This Bench is in complete agreement with the action of the RP in rejecting the claim on both the above grounds. As rightly contended by the RP, the claim of the Applicant is based on a purchase order executed by the Corporate Debtor way back in 2015. The CIRP order was passed against the Corporate Debtor on 17.01.2020 and on 23.01.2020 the RP made public announcements to this effect as per process laid down under the Code/ Rules. The Applicant is miserably delayed in filling his claim before the RP as he filed his claim only on 19.09.2022 i.e.,

after almost 885 days from the date of mandated period for submission (i.e., 16.04.2020). Further, the Applicant filed this Interlocutory application on 16.12.2022 i.e., after 1064 days from the date of mandated period for submission of claim (i.e., 16.04.2022). The RP performed his duty by reflecting the claim of the applicant in the information memorandum as disputed and pending Adjudication by this Bench. It is also appropriate to mention here that a Resolution Plan for the Corporate Debtor has been duly approved by the COC on 14.04.2022 and is pending before this Tribunal for its approval.

22. The Applicant also undertook the conciliation proceedings through the MSME Council and sent notices to the Corporate Debtor dated 20.12.2019, 19.02.2020 and 13.05.2020. The Council also sent legal notice for arbitral proceedings on 12.07.2021 to both the parties i.e., Corporate Debtor and the Applicant. Further on 10.08.2021, the Applicant published an advertisement of the same in the newspaper, which duly cannot be proceeded by the Applicant as CIRP proceedings were already initiated against the Corporate Debtor on 17.01.2020, and moratorium was imposed under Section 13 and 14 of the Code. The said contravention was further continued when a notice for arbitration proceedings dated 12.07.2021 was issued by the MSME Council and arbitration award dated 13.05.2022 was passed in favour of the Applicant. The Applicant cannot take a plea here that he was not aware of the CIRP proceedings & moratorium on the Corporate Debtor, as the same was appropriately announced by the RP as per the process laid down under the Code/ Rules. It was also the duty of the Applicant to keep the Council updated and informed of the moratorium on any proceedings against the Corporate Debtor in terms of Section 14 of the IBC. It is apparent that he failed to keep the council informed. Since the arbitration award was passed by the Council

during the imposition of the moratorium as per Section 14 of the Code, this award cannot become a basis of acceptance of claims and condonation of delay by the Applicant.

23. For the aforesaid reasons, this bench finds no merit in the above application. Accordingly, the above I.A. 3746/2022 **is rejected and disposed of.**

**Sd/-**

**MADHU SINHA  
MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**