



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

IA(IBC)/43/KOB/2023

IN

CP(IB)/08/KOB/2021

(Under Section 60(5) of IBC, 2016 and Rule 11 of the NCLT Rules, 2016)

In the matter of M/s. Foodco Delicacies India Private Limited

MEMO OF PARTIES:

MARINE PRODUCTS EXPORTS DEVELOPMENT AUTHORITY

Statutory Body, Ministry of Commerce & Industry

(Government of India). MPEDA House,

Panampilly Avenue, Pb No. 4272, Cochin – 682 036.

Kerala, India, represented by its secretary.

... Applicant

-Versus-

CS RAMACHANDRAN T M, Interim Resolution Professional of the Company Foodco Delicacies India Private Limited (under CIRP), 1st Floor, SajiNivas, Near Harwin Plaza, Dr. AR Menon Road, Naickanal, Thrissur, Kerala – 680 001.

... Respondent

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant : Ms Raaga Ramalakshmi
Advocate

For Respondent : Mr. Sankar P Panicker,
Advocate

Mr Ramachandran Thekkumkat
Madathil, RP

Order reserved on: 01.02.2023

Order pronounced on: 01.03.2023



ORDER

1. This I.A has been filed under Section 60 (5) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016 by Marine Products Exports Development Authority against the Resolution Professional (RP) of M/s Foodco Delicacies India Private Limited, the Corporate Debtor (CD), seeking condonation of delay in filing the claim and to direct the Respondent/ RP to accept the Form C claim filed by the Applicant.
2. The applicant is a Creditor of the Corporate Debtor and stated that the Corporate Debtor had entered into a Bond with the Applicant under the Technology Upgradation Scheme (TUSMP) of the Government of India whereby financial assistance of INR 42.17,759/- was released against machinery and unit of the Corporate Debtor on 06.01.2017. Against the said release of financial assistance, the Applicant also submitted a Bank Guarantee equivalent to 10% of the assistance.
3. The applicant further stated that they had issued a Sanction Order dated 29.12.2016 for release of Rs. 42,17,759/- being towards financial assistance under Technology Upgradation Scheme for Marine Products. The Corporate Debtor issued advance acknowledgement receipt of Rs. 42,17,759/- dated 29.12.2016. The sum was released to the Corporate Debtor on 06.01.2017.
4. The learned counsel for the applicant submitted that the applicant was contemplating initiation of legal proceedings against Corporate Debtor the latter had failed furnish documents timely the proof of exports, and the Applicant had the Bank Guarantee Rs.4,21,776/- violation of the Agreement. When the applicant came to know about the CIRP, they immediately filed claim petition before the Resolution Professional, however, could file it being a national body and concerned officers including



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approving officers from deputation and new officers taking charge of matters.

5. The learned counsel for the applicant further submitted that the applicant is national autonomous body falling under the Ministry of Commerce & Industry, and therefore several levels of permission was required for initiating proceedings against the Corporate Debtor So also, during the time, the Chairman of the Applicant was also changed twice by the Government as per rules, however, causing further delay. To fortify the argument the learned counsel quoted the judgement of Hon'ble Principal Bench NCLT, new delhi in the matter of Twenty-First Century Wire Roads Ltd. Where it is stated that:

"The rejection of claim on the ground of delay is not sustainable because the provisions have been held to be directory. We wish to make it clear that all the Resolution Professionals shall make a note of these repeated orders passed by NCLT clarifying that claim of an applicant, like the present one, could not be rejected on the ground of delay as the provision has been held to be directory."

6. The applicant stated that being a rightful creditor, they are entitled to claim and receive the amount payable and further added that these claims are also reflected in the books of accounts of the Corporate Debtor. The delay in filing the claim is further not intentional.
7. We have heard the matter in detail and perused the application filed. It is seen that the Respondent has not filed the counter even after giving sufficient time.
8. The reasons stated for the delay in submitting the claims are satisfactory. The CIRP is still under progress and no Resolution Plan has been approved. Hence, no prejudice will cause to any of the delays are condoned. In the result the delay occurred in filing claims are condoned. The Resolution



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Professional is directed to receive the claims and consider them on merits in accordance with law. To that extent, this application is Allowed.

9. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
10. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.
11. File be consigned to records.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.03.01 15:39:19 +05'30'

Satya Ranjan Prasad
Member (Technical)

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PANDIAN MOHAN RAJ
Date: 2023.03.01 15:06:06
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MOHAN RAJ

P. Mohan Raj
Member (Judicial)

Signed on this the 01st day of March, 2023.