



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

I A No. 1470 OF 2023

IN

C.P. (IB) No. 4336 OF 2019

Under Section 60(5) of the Insolvency and
Bankruptcy Code

Himadri Foods Limited

Address – A-173/2, TTC Industrial Area
MIDC Village, Koper Khairane, Navi
Mumbai, Mumbai thane MH 400701.

..... Applicant

Versus

**Registrar of Companies, Maharashtra,
Mumbai**

Address – 100, Everest, Marine Drive
Mumbai – 400002.

... Respondent No. 1

Hari Kishan Bhoklay

Address -1507, B Wing, One BKC, Opposite
Bank of Baroda, Bandra Kurla Complex,
Bandra East, Mumbai – 400051.

... Respondent No.2/R P

In the matter of

Pentaaleon Packaging LLP

..... Operational Creditor

Versus



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

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In
C.P.(IB) 4336(MB) 2019

Himadri Foods Limited

..... Corporate Debtor

Order Delivered on :- 12.11.2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Applicant/SRA	:	Counsel, Amey Hadwale
For the Respondent	:	None

ORDER

Per: - Coram

1. This Application has been filed by the Applicant, the Successful Resolution Applicant seeking certain directions against Respondent No.1, the Registrar of Companies, Maharashtra, Mumbai. Respondent 2 is erstwhile Resolution Professional of the Corporate Debtor.
2. The facts giving rise to the Application are that Himadri Foods Limited (hereinafter called 'the Corporate Debtor') was admitted to the Corporate Insolvency Resolution Process (CIRP) vide order of this Tribunal dated 31.05.2022 and Mr. Ramchandra Dallaram Chaudhary was appointed as the Interim Resolution Professional of the Corporate Debtor. The IRP was subsequently replaced with Mr.



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Hari Kishan Bhoklay as Resolution Professional(RP) who has been arrayed as Respondent No.2 herein. During the CIRP Process, a consortium of Viraki Brothers (Partnership firm) along with Anish Ramesh Shah and Dipen Ramesh (collectively 'Resolution Applicant') submitted a Resolution Plan for revival of the Corporate Debtor and the said plan came to be approved by the Committee of Creditors ('CoC') with 87.15% voting and further approved by NCLT vide its order dated 07.10.2022.

3. In furtherance to the approval of the Resolution Plan, the Successful Resolution Applicant commenced the process of taking over the business operations of the Corporate Debtor. During the time, it was noticed that the erstwhile management and the Resolution Professional/Respondent No. 2 in their respective tenure had failed to undertake the necessary compliance of filing annual returns and other documents with Respondent No.1/RoC. The non-compliances pertaining to the period 01.04.20219 to 31.03.2022 when the erstwhile management and Respondent No. 2/Resolution Professional were in charge of the operations of the Corporate Debtor.
4. The Counsel for the Applicant further submits that non-compliance primarily relates to non-filing consolidated financial statements of the company and all the subsidiaries and associate companies, as per Section 129(2) of the Companies Act, 2013. The efforts made/email sent by the Applicant to obtain necessary information and records from the erstwhile management did not yield any result. Similarly,



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Respondent No. 2/RP also failed in his duties to submit the necessary forms, during his management of the Corporate Debtor.

5. The Counsel for the Applicant submits that the Applicant is facing difficulties in filing the statutory returns of the Corporate Debtor and, therefore, seeks directions to the Respondent No. 1 to accept filing the documents on a standalone basis without payment of any penalties and/or late fees or additional fees. The Counsel states that it is not possible for the Applicant to prepare consolidated financial statements of the Corporate Debtor together with all subsidiaries and associated companies for the period prior to 31.03.2022.
6. Though notices were issued and duly served upon the Respondents, none entered appearance and filed its reply. We, therefore, heard the submissions made by the Applicant and perused the documents on record.
7. The averments made in the Application would indicate that the Applicant has faced genuine difficulty in collating the data for filing anterior statutory returns. On account of the pendency of earlier returns, the Applicant is not able to file the returns online relating to the period after his takeover or file physical forms with R1.
8. It is a settled position of law that the new management of the Corporate Debtor could not be held liable or responsible for malfeasance or misfeasance committed by the former promoters/directors of the Corporate Debtor. The new management



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could not be saddled with the repercussions of the reprehensible actions of the erstwhile management.

9. In *Shaik Salim Haji Abdul Vs. Mr. Kumar & Others: (AIR 2006 SC 396)*, the Hon'ble Supreme Court echoed that rules of procedure are but handmaidens of justice. Further, the Hon'ble Supreme Court in *Sardar Amarjit Singh Kalra v. Promod Gupta: (2003) 3 SCC 272* observed that laws of procedure are meant to regulate effectively, assist, and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizens under personal, property and other laws. The procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify the miscarriage of justice. The Hon'ble Court in *Collector, Land Acquisition v. Mst. Katiji: AIR 1987 SC 1353* ruled that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. The principle has also been echoed by the Hon'ble Supreme Court in *Laxmibai Vs. Bhagwantbuva (Civil Appeal No. 2058 of 2003 decided on 29.01.2013)*.
10. Taking the facts and circumstances of the case into consideration and the decisions laid down by the Courts, it is considered appropriate to pass the following directions:-
 - i) Respondent No. 1 is directed to enable the filing of the statutory returns of the Corporate Debtor by the Applicant without imposing any penalties and/or late fees or additional fees for the period



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01.04.2009 to 31.03.2022. Respondent No.1 is also directed not to insist on filing consolidated financial statements relating to the period prior to 31.03.2022.

ii) Respondent No. 1 or the appropriate authority shall consider accepting returns and statements in the physical form for the period of 01.04.2009 to 31.03.2022 in case of incompatibility for online submission/e-filing.

11. The Application is **allowed in the aforesaid terms and disposed of.**

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
//SALAM//

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)