

IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD

CP (IB) No. 501/9/HDB/2019

U/s 9 of IBC, 2016

R/w Rule 6 of I & B (AAA) Rules, 2016

IN THE MATTER OF:

Haris Marine Products  
Post Box No.199, Trinity Commercial Complex  
1<sup>st</sup> Floor, N.G. Road, Attavar  
Mangalore – 575001  
Karnataka

Operational Creditor/  
... Petitioner/

VERSUS

M/s. Nexus Feeds Limited  
Door No. 8-1-301/86 & 87  
Plot No.101, Saipriya Residency  
Lakshmi Nagar Colony  
Hyderabad – 500008

...Corporate Debtor/  
Respondent

Date of Corrigendum: 06.11.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Parties / counsels present:

For the Petitioner: Shri B.S. Jayanth Mishra along with Shri  
Shahbaaz, Advocates

For the Respondent: Shri Shaik Gouse along with Shri  
Mahadev Tirunagari, PCS

Heard on: 18.10.2019


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### CORRIGENDUM ORDER

1. The Counsel for Operational Creditor vide email dated 06.11.2019 requested the Tribunal to modify the order dated 04.11.2019 where under Shri Rajesh Chhaparia was appointed as Interim Resolution Professional of M/s Nexus Feeds Limited. He expressed his ability to give consent owing to prior commitments and as such suggested the name of Shri Koteswara Rao Gutta as Interim Resolution Professional in place of Shri Rajesh Chhaparia.
2. Hence, the following modification is made to para 11 of this Tribunal order dated 04.11.2019 as under:-

Shri Koteswara Rao Gutta (having  
Registration No. IBBI/IPA-003/IP-  
N000129/2017-18/11455), #R/o Plot No. H-  
70, Madhura Nagar, SR Nagar, Hyderabad  
– 500038 Telangana is appointed as Interim  
Resolution Professional of M/s Nexus Feeds  
Limited.
3. This corrigendum order to be read along with the original order. Rest of the contents of the order remain the same.

  
6.11.19  
(NARENDER KUMAR BHOLA)  
MEMBER (TECHNICAL)

  
(RATAKONDA MURALI)  
MEMBER (JUDICIAL)



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Plot No.101, Saipriya Residency  
Lakshmi Nagar Colony  
Hyderabad – 500008

...Corporate Debtor/  
Respondent

**Date of order: 04.11.2019**

**Coram:**

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narender Kumar Bhola, Member (Technical)

**Parties / counsels present:**

For the Petitioner: Shri B.S. Jayanth Mishra along with Shri  
Shahbaaz, Advocates

For the Respondent: Shri Shaik Gouse along with Shri  
Mahadev Tirunagari, PCS





Heard on: 18.10.2019

**PER: SHRI NARENDER KUMAR BHOLA  
MEMBER (TECHNICAL)**

- 1) Under consideration before us is the petition filed by M/s Haris Marine Products/ Operational Creditor herein stating that M/s Nexus Feeds Limited / Corporate Debtor committed default of Rs. 21,12,790/-. Hence, this petition is filed under Section 9 of Insolvency & Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
- 2) The averments germane to the petition in brief are:-
  - (1) The Operational Creditor is a registered partnership firm which is engaged in the business of manufacture and export of steamed fish meal, fish oil etc.
  - (2) The Corporate Debtor is a Company registered under the Companies Act, 1956 and is primarily engaged in the business of fishing, operation of fish hatcheries and fish farms etc.
  - (3) Numerous purchase orders were placed by Corporate Debtor with Operational Creditor for purchase of fish oil since 2011. The goods were supplied as per the purchase orders and Corporate Debtor made part payments for the same.

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Operational Creditor issued demand notice in form-3 on 03.07.2018. The Corporate Debtor failed to reply to the Demand notice. Hence, this petition.

- 3) Counter is filed by Corporate Debtor refuting the averments made by the Operational Creditor and contested as under:-
  - (1) It is the case of Corporate Debtor that it could not contest the civil suit bearing OS No.149/2013 filed before IIIrd Addl. Senior Civil Judge, Mangaluru as summons were not served on the Corporate Debtor and the Operational Creditor obtained an ex-parte order dated 01.08.2016. Aggrieved by the said order, the Corporate Debtor has already preferred an Appeal against the order. As such there is an existence of dispute before issuance of demand notice.
  - (2) The Corporate Debtor has not acknowledged or admitted its liability. As such urged this Tribunal to reject the petition on the ground of pre-existing dispute.
- 4) As per directions of this Tribunal, the Corporate Debtor filed memo dated 18.10.2019 enclosing the copy of set-aside and re-open petition before IIIrd Addl. Senior Civil Judge, Mangalore.
- 5) Heard the Counsels for Operational Creditor and Corporate Debtor. It is the case of Operational Creditor that claim against the Corporate Debtor had crystallized with the issue of decree dated 01.08.2016 by the court of IIIrd Additional Senior Civil Judge, Mangaluru whereby the Corporate Debtor has been directed to pay an amount of Rs. 20,27,799/- along with interest @ 12% from 03.10.2013 till date of realization.

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The Counsel submits that the said decree has become absolute since the time limit to file any appeal against the said order is already over and the same became time barred, cannot constitute as a dispute so as to impede the insolvency resolution process. To support his view, the Counsel for Operational Creditor relied upon the decision of Hon'ble Supreme Court in *K. Kishan Vs M/s Vijay Nirman Company Pvt. Ltd (2018 SCC OnLine SC 1013)* in Civil Appeal No. 21824/2019. In the judgement of Hon'ble Supreme Court in the above matter, para 19 thereof reads as under:-

*"We may hasten to add that there may be cases where a Section 34 petition challenging an Arbitral Award may clearly and unequivocally be barred by limitation, in that it can be demonstrated to the Court that the period of 90 days plus the discretionary period of 30 days has clearly expired, after which either no petition under Section 34 has been filed or a belated petition under Section 34 has been filed, It is only in such clear cases that the insolvency process may then be put into operation".*

- 6) Accordingly, the Counsel for Operational Creditor submits that keeping in view the date of decree i.e. 01.08.2016, the limitation to file any appeal has already ended on 31.08.2016. As against this, the Corporate Debtor had filed petition only in 2019 i.e. 27 months after limitation period and the same is hopelessly barred by limitation. In view of this, he submits that the order of Hon'ble Supreme Court brought out in the case of *K. Kishan Vs M/s Vijay Nirman Company Private Limited* is squarely applicable to the present facts. He further







submits that in light of the Petition under Order 9 Rule 13 of CPC being filed after the insolvency proceedings initiated and after the expiry of limitation period, the same does not constitute a dispute and impediment to the initiation of CIRP.

- 7) Counsel for Corporate Debtor on the other hand, has maintained that the present petition filed by Operational Creditor is not maintainable in view of the petition filed by the Corporate Debtor. According to him, the same tantamount to existence of dispute as per definition of dispute under Section 5 (6) of IBC. Therefore, he pleads that the petition may be rejected.
- 8) The contention of the Counsel for Corporate Debtor that Civil Court at Mangaluru already seized of the matter. The Petitions are pending before the Civil Court Mangaluru. Thus, the contention of Learned Counsel that there is a pre-existing dispute within the meaning of Section 4 (6) of IBC. In this connection, the Learned Counsel for corporate Debtor has relied on the following decisions:-
  - (i) Hon'ble NCLAT orders passed in CA No (IB) No.24/PB.2017 in the matter of M/s Deem Roll-Tech Limited against M/s R.L. Steel & Energy Limited, New Delhi dated 31.03.2017
  - (ii) Hon'ble NCLT, Bengaluru Bench order passed in CP (IB) No. 65/BB/2019 in the matter of Mr. P. Arunane, Bangalore vs One Bill Software Indian Private Limited, Bangalore dated 28.08.2019.







- (iii) Hon'ble NCLT Principal Bench order passed in CP No. (IB) 1492(PB)/2018 dated 03.09.2019 in the matter of Smt Tejinder Kaur Vs Bhawani Castings Private Limited.
- (iv) This Bench order dated 18.01.2018 in CP (IB) No. 211/09/HDB/2017 in the matter of M/s IAE Electricals Private Limited Vs Aster Private Limited.
- (v) This Bench order dated 25.09.2019 passed in CP (IB) No. 465/9/HDB/2018 in the matter of Sanvei Overseas Private Limited vs V Soft Technologies Private Limited.

- 9) We have gone through the petition, pleadings by both the parties as well as written submissions filed by both the Counsels and heard their oral arguments. It is a fact that the Operational Creditor has obtained a decree in its favour from the court of IIIrd Additional Senior Civil Judge, Mangaluru on 01.08.2016 against the Corporate Debtor herein for recovery of an amount of Rs. 20,27,799/- along with interest @ 12% from 03.10.2013 till date of realization. It is also brought on record that the Corporate Debtor has not preferred any appeal against the said Court till the initiation of proceedings under IBC by the Operational Creditor. It is well established, in view of lapse of the statutory time limitation to file appeal/ petition against the said order of IIIrd Additional Senior Civil Judge, the decree passed by the said court has reached finality. It is a fit case which comes within the four corners of the judgement of Hon'ble Supreme Court in the matter of *K. Kishan Vs M/s Vijay Nirman Company Pvt. Ltd.*







Accordingly, we hold that in the present case, there is no dispute pending with regard to the claim of the Operational Creditor against the Corporate Debtor herein. The Operational Creditor has been able to establish its claim against Corporate Debtor through the decree of IIIrd Additional Senior Civil Judge, Mangaluru issued in Civil Suit bearing OS No.149/2013.

- 10) We have gone through the decisions cited supra. The facts of the decisions cited are different to the facts of the present case. Already suit was decreed. There was no pendency of suit when Operational Creditor filed petition under Section 9 against the Corporate Debtor. Maybe Corporate Debtor filed Petition for setting aside the decree. It is filed beyond limitation. Mere filing of Application / Petition for setting aside the decree under Order 9 Rule 13 of CPC against the Corporate Debtor does not amount to dispute pending. If suit is pending, only then we can come to a conclusion that there is dispute pending. Since suit was already disposed and ended in a decree, therefore, it cannot be said there is a pre-existing dispute on the ground application was filed for setting aside the decree which was filed beyond time prescribed. Therefore, petition deserves to be admitted as there is default committed by the Corporate Debtor.
- 11) The Operational Creditor failed to name anyone as Interim Resolution Professional and has requested the Tribunal to appoint one for the Corporate Insolvency Resolution Process. The Insolvency and Bankruptcy Board of India

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(IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period 1st July 2019 to 31<sup>st</sup> December, 2019 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr. Rajesh Chhaparia having registration number IBBI/ IPA-001/ IP-P00474/2017-2018/10817, Mob No. 9652184801 e-mail id: rajesh\_chhaparia@yahoo.co.in as Interim Resolution Professional. The aforesaid interim resolution professional has no disciplinary proceedings pending against him. He shall file his written communication and all relevant paper immediately before Registrar of this Tribunal but not later than two days.

- 12) Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

- (1) The Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority; Transferring , encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of

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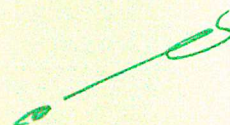




Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

- (2) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (3) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) That the order of moratorium shall have effect from 04.11.2019 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- (5) The Petitioner is directed to pay a sum of Rupees 2,00,000/- (Two Lakhs Only) to the interim resolution professional to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the committee of

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creditors as accounted for by interim resolution professional and shall be paid back to the petitioner.

- (6) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

Accordingly, this Petition is admitted.

  
NARENDER KUMAR BHOLA  
MEMBER (TECHNICAL)

  
RATAKONDA MURALI  
MEMBER (JUDICIAL)

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