



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)

CP (IB) No.136/BB/2022
U/s. 9 of the IBC, 2016
R/w Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

Aviagen India Poultry Breeding Company Private Limited,

Registered Office at:
Elayamuthur Gandhinagar
Udumalpet Taluk, Tiruppur
Tamil Nadu 642 154.

... Petitioner/Operational Creditor
Versus

Kavi Protein and Feed Private Limited,

Registered Office at:
No.26, Sindhi Colony
Second Floor,
First Cross, J C Road
Bangalore, Karnataka 560 002.

... Respondent/Corporate Debtor

Order delivered on: 2nd June, 2023

Coram: Hon'ble Justice (Retd) T. Krishnavalli, Member (Judicial)
Hon'ble Shri. Manoj Kumar Dubey, Member (Technical)

PRESENT:

For the Petitioner : Shri. Abhijit Atur

For the Respondent : Shri Nataraj

O R D E R

Per: T. Krishnavalli, Member (Judicial)

1. The present petition is filed on 07.01.2022 under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC'/Code), r/w. Rule 6 of the I&B (Application to Adjudicating Authority) Rules 2016, by M/s Aviagen India Poultry Breeding Company Private Limited (for brevity 'Operational Creditor/Petitioner') inter alia seeking to initiate



Corporate Insolvency Resolution Process against M/s. Kavi Protein and Feed Private Limited (hereinafter referred as 'Corporate Debtor/Respondent) on the ground that the Corporate Debtor has committed a default for a total outstanding amount of Rs. 2,98,24,461/-(Rupees, Two Crores Ninety Eight Lakhs, Twenty Four Thousand Four Hundred and Sixty One only), along with pendent lite interest @ of 18% per annum from upto September 30,2021 of INR 95,67,883/- aggregating to INR 39,392,344/- including interest till September 30, 2021.

2. Brief facts of the case, which are relevant to the issue in question, and as narrated by the Petitioner are as follows:
3. The Operational Creditor is a private company limited by shares, which is engaged in the business of poultry breeding.
4. It is submitted that in 2018, the respondent approached the petitioner for supply of poultry products to the respondent and since then the Corporate Debtor placed several orders and the Petitioner have supplied the poultry products to the satisfaction of the respondent.
5. Further, for each transaction, the petitioner had raised invoices and bills of supply and upon delivery of committed goods the respondent has to make good the payments. However, by mid 2019, the Respondent failed to make payment of certain invoices raised by the Petitioner. It is submitted that at present, there are 15 invoices pending against the Corporate Debtor.
6. Despite the specific governing terms and conditions of sale that payment of total invoice value so raised shall be remitted within 15 days, the Respondent has failed to make payment towards the outstanding dues. It is submitted that the Petitioner has send reminder email on May 14, 2021 and July 6, 2021, to make payments of the outstanding invoices. However, the respondent inspite of giving assurance to make payments expeditiously, has failed to do so.
7. It is submitted that the, on 30.09.2021, the Petitioner sent a demand notice under Section 8 of the Code demanding a total operational debt of INR 39,392,344 comprising of outstanding principal amount of INR 2,98,24,461/- along with outstanding interest calculated upto



September 30, 2021 of INR 9,567,883/- was outstanding and payable by the Corporate Debtor. However, despite the service of Demand Notice on 06.10.2021 the respondent failed to repay unpaid invoices against the supplies made by the Petitioner along with interest.

8. The Learned Counsel for the respondent filed his reply vide diary No. 4320 dated 11.10.2022 interalia submitting that the respondent Company in accordance with the various invoices of petitioner company paid an amount of Rs. 16,28,52,494/- and only the due amount pending for payment is INR 2,98,24,461.
9. Further, the respondent has sought for reasonable period of time to make payment of Rs. 2,98,24,461/- in instalments and for waiving off the interest amount of Rs. 95,67,883/-
10. The Learned Counsel for the Petitioner filed his rejoinder vide diary No. 417 dated 23.01.2023 and the same is taken on record.
11. On 17.02.2023 the learned counsel for the Respondent submitted that the reply has been filed accepting the debt and default.
12. Heard both the Counsel and perused the records available.
13. The Present petition is filed under section 9 of the IBC, 2016 with a prayer to initiate Corporate Insolvency Resolution Process against the Respondent company for committing a total default of INR 3,93,92,344/- comprising of outstanding principal amount of INR 2,98,24,461/- along with outstanding interest calculated upto September 30, 2021 of INR 9,567,883/-. The threshold mandated under section 4 of the IBC, 2016 is met.
14. It seen from the Petition that the Demand Notice under section 8 of the IBC, 2016 calling for a total outstanding operational debt of Rs. 3,93,92,344/- was duly served on the Corporate debtor.
15. The date of default is on 12.09.2019 and the present petition is filed on 07.01.2022, which is well within the limitation.
16. Further, the Corporate in his reply dated 11.10.2022 has admitted the debt and default.
17. Accordingly this adjudicating authority is of the considered opinion that there is no reason to deny the petition filed under section 9 of the



IBC, 2016 by the Operational Creditor to initiate CIRP against the Corporate Debtor, M/s Kavi Protein and Feed Private Limited.

18. However, it is noticed that this Tribunal vide order dated 24.01.2023 in CP (IB) No. 88 of 2021, has initiated CIRP and imposed moratorium against the same Corporate Debtor , M/s Kavi Protein and Feed Private Limited.
19. Accordingly this instant Petition **CP (IB) No. 136/BB/2022 is disposed** of, with a direction to the operational creditor, M/s Aviagen India Poultry Breeding Company Private Limited to file its claim before the IRP of the Corporate Debtor

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(T. KRISHNAVALLI)
MEMBER (JUDICIAL)**