

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No.125/Chd/Hry/2021

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Aviagen India Poultry Breeding Company Private Limited

with its registered office at
Elayamuthur Gandhinagar
Udumalpet Taluk, Thiruppur
Tamil Nadu - 642154
CIN: U01222TZ2007FTC016577

...Petitioner-Operational Creditor

Vs.

M/s Hygiene Feeds & Farms Private Limited

with its registered office at
Village Adiyana, Tehsil Madlauda,
Panipat, Haryana - 132113
CIN: U01210HR2010PTC040500

...Respondent-Corporate Debtor

Judgment delivered on: 18.07.2022

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-Operational Creditor: Mr. Rajiv Kumar Virmani, Advocate

For the respondent-Corporate Debtor : Ex parte vide order dated 11.01.2022

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by Mr. Paul Gittins,

Director of Aviagen India Poultry Breeding Company Private Limited (**for brevity 'Operational Creditor' / 'Petitioner'**) with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of M/s Hygiene Feeds & Farms Private Limited (**for brevity 'Corporate Debtor'/'Respondent'**).

2. The Corporate Debtor namely, M/s Hygiene Feeds & Farms Private Limited, is a Company incorporated on 07.05.2010 under the provisions of Companies Act, 1956 with CIN No.U01210HR2010PTC040500 with its registered office at Village Adiyana, Tehsil Madlauda, Panipat, Haryana - 132113. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure-2.

3. The facts of the case, briefly, as stated in the petition are that in 2015, the Corporate Debtor approached the Operational Creditor for supply of the poultry products, primarily for parent stock chicks, and since then the Operational Creditor has supplied stock of more than Rs.4 Crores to the Corporate Debtor. However, in 2017-18, the Operational Creditor had to stop the supply as the Corporate Debtor defaulted in making payment on various occasions and till date has not made the full payment. Copy of unpaid invoices (Annexure-4). Copy of Ledger maintained by Operational Creditor qua the Corporate Debtor (Annexure-8).

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.2,60,97,973/- consisting of the principal of INR 1,73,09,110/- coupled with interest of Rs.87,88,863/- calculated from 01.09.2018 till 15.02.2021 and the date of default is 01.09.2018.

5. A demand notice in Form 3 dated 11.11.2020, is stated to be issued to the Corporate Debtor. A written acknowledgement of duly received has been attached at Page 107 of the petition. The same has been confirmed through email by Corporate Debtor (as per master data). True copy of the email dated 03.12.2020 sent by the Corporate Debtor to the Petitioner is attached as Annexure-11 of the petition.

6. In Part-III of Form No.5, No Interim Resolution Professional has been proposed by the petitioner. Keeping in view of this, we appoint Mr. Harsh Garg, Insolvency Resolution Professional.

7. Accordingly, order dated 07.07.2021, notice of this petition issued to the corporate debtor to show cause as to why this petition be not admitted. It is to be noted that despite substituted mode of service i.e. through newspaper publication, none appeared on behalf of the respondent-corporate debtor. The respondent-corporate debtor was proceeded ex parte vide order dated 01.11.2022.

8. We have heard the learned counsel for the petitioner have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 dated 11.11.2020 was properly served. The petitioner has placed a written acknowledgement duly received by Corporate Debtor and through the email as well whereunder it was stated that the demand notice was delivered.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that the respondent-corporate debtor already proceeded ex parte. Moreover, the

petitioner has appended affidavit u/s 9(3)(b) vide Diary No.5362/5 dated 12.05.2022 stating that corporate debtor has not issued any notice or raised any dispute regarding the debt for which the present petition has been filed by the operational creditor.

11. The other issue for consideration is whether this application is filed within limitation. This application was filed on 19.04.2021 vide Diary No.00526. Whereas the date of default i.e. 01.09.2018. Therefore, this Adjudicating Authority finds that this application has been filed within limitation.

12. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt Rs.2,60,97,973/- consisting of a principal of INR 1,73,09,110/- coupled with interest of Rs.87,88,863/- calculated from 01.09.2018 till 15.02.2021. The operational creditor has supplied materials to the corporate debtor and raised invoices attached as Annexure-4. Accordingly, the petitioner proved the debt and the default which is more than Rupees one crore by the respondent-corporate debtor.

13. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. Accordingly, the petitioner proved the debt and the default, which is above the threshold limit.

14. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after

demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, M/s Hygiene Feeds & Farms Private Limited and also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect and appoint Interim Resolution Professional as below:-

- a) 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;
- b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002;
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

15. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of

Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

16. The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

17. The Law Research Associate of this Tribunal has checked the credentials of Mr. Harsh Garg and there is nothing adverse against him. In view of the above, we appoint Mr. Harsh Garg, Registration No.IBBI/IPA-001/IP-P00243/2017-18/10472, E-mail: harsh.garg81@gmail.com, Mobile No.9815343200 as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Harsh Garg shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) The Interim Resolution Professional i.e. Mr. Harsh Garg is directed to file his written consent in Form-2 within one week of this order.
- iii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs

shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

- iv.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- v.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the

Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- vi.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and
- viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

18. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

19. The present petition i.e. CP (IB) No.125/Chd/Hry/2021 is allowed and admitted accordingly.

20. A copy of this order be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 18, 2022

AV/ASH