

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

(Video Conference)

CORAM: DR.VENKATA RAMAKRISHNA BADARINATH NANDULA – HON'BLE MEMBER (J)  
CORAM: SHRI SATYA RANJAN PRASAD, HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 01.12.2022 AT 2:00 PM THROUGH VIDEO CONFERENCE

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1291/2022 in Company Petition IB/230/2022
NAME OF THE COMPANY	Mahimega Agritech Pvt Ltd
NAME OF THE PETITIONER(S)	Novel Tech Feeds Pvt Ltd
NAME OF THE RESPONDENT(S)	Mahimega Agritech Pvt Ltd
UNDER SECTION	9 of IBC

**ORDER**

**IA 1291/2022**

Order in IA 1291/2022 pronounced. Recorded vide separate sheets. In the result, the petition is allowed. Consequently, the order putting the Corporate Debtor under CIRP vide order dated 19.10.2022 is hereby set aside. The moratorium is lifted and the Corporate Debtor is at liberty to function on its own. However, the Corporate Debtor shall file the Counter within 10 days from today. In default, the application stands dismissed.

**We also direct the Registry to list the matter on 23.12.2022 for hearing. Both parties shall get ready for hearing on 23.12.2022.**

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**MEMBER TECHNICAL**

*Self*

**MEMBER JUDICIAL**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH -II, HYDERABAD**

I.A No. 1291of 2022 in  
CP (IB) No.230/9/HDB/2022.  
Under Section 9 of the IB Code, 2016.

**IN THE MATTER OF  
MAHIMEGHA AGRITECH PRIVATE LIMITED.**

**Between:**

**Venkata Reddy Atla**

Promoter, Director and Shareholder of Corporate Debtor,  
#Flat no 204,Plot no 49&50,Syamala Pride Apartment,  
Silpa Layout, Opp:JNTU, Near INCOIS,  
Pragati Nagar Vill, Bachupally Mandal, Telanagana-500090.

**.... Applicant**

**Versus**

**Noveltech Feeds Private Limited**

Having its registered office at:  
Nirlon House, Unit No 22, 5th Floor,  
254-B, DR. Annie Besant Road, Worli Mumbai City,  
MH 400030 IN.

**.... Operational Creditor/  
Respondent No.1.**

Mr. Ritesh Mittal

Sanjay Kumar Kothari & Co., 205, Doshi Chambers,  
Basheerbagh, Hyderabad, West Marredpally,  
Telangana ,500029.

**.... Interim Resolution Professional/  
Respondent No.2.**

**Date of Order : 1<sup>st</sup> December 2022**

**Coram:**

**Dr. Venkata Ramakrishna Badarinath Nandula, Member Judicial  
Shri Satya Ranjan Prasad, Member Technical**

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**Parties/Counsels Present:**

For the Applicant : Mr. M. Maharshi Viswaraj, Advocate

For the Respondent No.1 : Mr. N.B. Sudarshan, Advocate

**Per: Bench**

**ORDER**

1. Under Consideration is an Application filed Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 R/w. Rule 11, 32 and 49 of NCLT Rules, 2016, by the Mahimegha Agritech Private Limited, inter-alia seeking following reliefs:-
  - a. That this Adjudicating Authority may be pleased to set aside the Ex-Parte Admission Order dated 19.10.2022, in CP(IB) No.230/9/HDB/2022, passed against the Corporate Debtor, to enable the Corporate Debtor to come on record before the Tribunal and pass such other order as it may fit in the circumstances of the case.
  - b. Permit the Corporates Debtor to file Counter and Advance Arguments.
2. Brief facts of the case as stated by the Applicant is as under:-
  - a. That M/s. Noveltech Feeds Private Limited (Respondent No.2), an alleged Operational Creditor, filed an application before this Hon'ble Adjudicating Authority to initiate Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor under Section 9 of the Code. This Hon'ble Adjudicating Authority vide order dated 19.10.2022 passed Ex-Parte

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Admission Order and appointed Mr. Ritesh Mittal (Respondent No.2) as the Interim Resolution Professional (“IRP”).

- b. That the Operational Creditor before filing Section 9 Application has to serve Demand Notice under Section 8, Advance Notice under Rule 6 of IBBI (Application to Adjudicating Authority) Rules, 2016 and Notice of Hearing under Rule 37 of NCLT, Rules,2016 (Notice to Opposite Party). Admittedly all three mandatory notices have not been served on the Corporate Debtor.
- c. That for filing Application under Section 9, Section 8 of the I&B, Code and Rule 5 of IBBI (Application to Adjudicating Authority) Rules,2016 must be complied strictly without any anomaly. The Operational Creditor has not complied the provisions of Section 8 of the code and same must be rejected as not maintainable.
- d. That the Operational Creditor did not serve Demand Notice as contemplated under Section 8 of the Code R/w Rule 5 of IBBI (Application to Adjudicating Authority) Rules, 2016 on Corporate Debtor before filing present application under Section 9 of the Code. That as per the MCA Records/ ROC Records the Registered Office of the Corporate Debtor is situated at Flat no 204, Plot no 49&50,Syamala Pride Apartment, Silpa Layout, Opp:JNTU, Near INCOIS, Pragati Nagar Vill, Bachupally Mandal, Telanagana-500090. But the Demand Notice was addressed and served on the following address which can be seen at Page No.66 of the Application: Mahimegha Agritech

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Private Limited, Shop No.2 Dwarakamayee Apartment, Shilpa Layout, Pragati Nagar, Hyderabad-500090.

- e. The Postal Receipt and Postal Track Record filed along with Application shows that the Demand Notice was not dispatched to the Registered Office of the Corporate Debtor. As per Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 the Demand Notice must deliver to the Corporate Debtor at the Registered Office.
- f. That the Demand Notice under Section 8 of the I & B Code, 2016 to be dispatched to the Registered Office of the Corporate Debtor by registered post or speed post.
- g. The Operational Creditor did not file postal tracking report to show that the Demand Notice was served on the Registered Office of the Corporate Debtor. It is pertinent to note that the postal cover filed by the Operational Creditor at Page No. 66 of the Application does not show that the notice was delivered at the Registered Office of the Corporate Debtor. From the Postal Cover which was enclosed at Page No.66 of the Application it clearly shows that it was addressed to different address and same was returned unserved.
- h. The counsel for the Applicant reliance on the following judgments:-
  - i. The Hon'ble NCLAT in **Company Appeal (AT) (Insolvency) No. 635 of 2018 in Sunil Sanghavi Versus Cytech Coatings Pvt. Ltd**
  - ii. The Hon'ble NCLAT in **'Mr. Shailendra Sharma Director of R&M International Pvt. Ltd.' V/s. 'Ercon**

**Composites & Ors.' Company Appeal (AT) (Ins) No. 159 of 2020**

iii. The Hon'ble NCLAT in **COMPANY APPEAL (AT) (Insolvency) No. 775 of 2020 in Jyoti Strips Private Limited Versus JSC Ispat Private Limited**

- i. That before filing Application, the Operational Creditor has to serve a copy of the Application on the registered office of the Corporate Debtor as contemplated under Rule 6 of IBBI (Application to Adjudicating Authority) Rules,2016.
- j. The Operational Creditor failed to serve copy of the Application on the registered office of the Corporate Debtor.
- k. The Operational Creditor filed a copy of e-mail at page no.289 to show that he sent copy of the Application to the registered email of the Corporate Debtor. The Registered E-Mail of the Corporate Debtor registered with MCA/ROC is **venkatreddy.atla@gmail.com**. But the Operational Creditor for the reasons best known to him and with a malafide intention sent e-mail to the wrong e-mail address i.e., **venatreddy.atla@gmail.com**. Thus, the copy of e-mail filed by the Operational Creditor itself shows that the Operational Creditor failed to send the copy of the Application to the Corporate Debtor and violated the mandatory provisions of the code. Proof of delivery of Application on the Corporate Debtor has not been filed by the Operational Creditor.
- l. The instant Company Petition was listed for the first time For Admission on 04.08.2022. Generally, on the admission day, the Adjudicating Authority issues notice on the Respondent. But the

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Docket Order Dated 04.08.2022 shows that one Ms. Chetna Reddy Advocate present and submitted that the Corporate Debtor had instructed her to file vakalat on behalf of Corporate Debtor. In fact, the Corporate Debtor had not given any instructions to Ms. Chetna Reddy and the Corporate Debtor was not aware the proceedings and filing of the instant company petition.

- m. That only on 21.10.2022 the Corporate Debtor came to know through personnel of Operational Creditor about the admission of company Petition. Immediately the Applicant approached Registry of this Hon'ble Tribunal and found that ex-parte admission order has been passed by this Hon'ble Tribunal on 19.10.2022. By the date 21.10.2022 the detailed order/Admission order was not uploaded in NCLT Website only docket order was uploaded by that date.
- n. That after seeing the previous docket orders, the Applicant approached Ms. Chetna Reddy, Advocate who informed the Applicant that she did not give any undertaking in the instant company petition on behalf of the Corporate Debtor. She further informed the Applicant that on 04.08.2022 she gave undertaking for filing vakalat on behalf of M/s. Vivek Sri Farm Private Limited in Company Petition IB/232/2022 (Item No.2) but not in the instant Company Petition.
- o. That in view of the above the Corporate Debtor was not aware the proceedings and filing of the instant company petition and under these unforeseen circumstances, the Applicant respectfully seeks the indulgence of this Adjudicating

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Authority, to kindly set aside the ex-parte Admission order dated 19.10.2022. It is submitted that the Company Petition contains several defendable issues on disputes between Operational Creditor and Corporate Debtor, procedural compliance, facts and also on the merits.

- v. That this Adjudicating Authority is empowered under Rule 49 (2) read with Rule 11 of the National Company Law Tribunal Rules, 2016 to set aside the ex-parte admission order, dated 19.10.2022 as the reasons stated above provide sufficient cause to show how the Corporate Debtor was constrained not to come on record and be present at the hearings. The Corporate Debtor was so constrained not because of any deliberate or wanton reason, but due to unforeseen circumstances and due to non-receipt of notice.
- w. Further, Applicant placed reliance on section 420 and 424 of the Companies Act, 2013, abstract of same is as under:-

Section 420 of the Companies Act, 2013 reads as follows:-

Section 420: Order of the Tribunal

420. (1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

Section 424 of the Companies Act, 2013 reads as follows: -

Section 424: Procedure before Tribunal and Appellate Tribunal

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424. (1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the **principles of natural justice....**

- x. As per the above-mentioned sections and as per principal of Audi Alteram Partem the Corporate Debtor has to be given opportunity to represent the case and contest the matter in the interest of justice.
  - y. That the no notice was given by the Operational Creditor to the Corporate Debtor. The Ex-Parte Admission Order is in violation of Principles of Natural Justice and hence on this ground alone this impugned order deserves to be set aside.
3. Counsel for the Respondent/ Original Operational Creditor has filed its counter, inter-alia, stating as under:-
- a. That the Respondent No.1/Operational Creditor had indeed complied with the pre-requisites of Section 8 of the IBC, 2016. I further submit that unwittingly the postal receipt, the returned envelope and the postal track report pertaining to the postage to the Registered office of the Applicant/Corporate Debtor could not be filed along with the Petition in the first instance due to oversight. I further submit that Notice under section 8 sent to the Corporate address, the postal receipt, the returned envelope and the postal track of the same had been filed with the petition accordingly.

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- b. That the copy of the Petition was sent by way of email addressed to Venatreddyatla@gmail.com instead of Venkatreddyyatla@gmail.com which is nothing but bona-fide slip. That it was absolutely not intentional as made out by the Applicant/Corporate Debtor.
- c. That when the matter was called out, Advocate viz., Ms Chetna Reddy has caused appearance and offered to file the vakalatnama on the next date of hearing so the Respondent No.1/Operational Creditor was under the bona-fide impression that the Advocate has caused appearance only upon the receipt of petition by the Applicant/Corporate Debtor.
- d. That, by way of abundant caution the Respondent No.1/Operational Creditor has sent an email dated 23.09.2022, to the regular email ID of the Applicant/Corporate Debtor intimating the next date of hearing and also the fact that the Applicant/Corporate Debtor has been produced ex-parte.
- e. That there was no necessity of intimating about the next date of hearing as Ms. Chetna Reddy had already intimated the next date of hearing vide email dated 23.09.2022 addressed to the mahimeghaagritech@gmail.com. That the said same E-mail ID was used for earlier correspondence/Communication also.
- f. That in addition to sending the notice to the Registered Address, the notice was also sent to the Corporate Address also however, inadvertently only the Postal Envelope and the Postal Receipt of the Alternative Address was only filed inadvertently.

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- g. That the notice under section 8 of the IBC, 2016 sent to the Registered office has come back with the remarks, "INCOMPLETE ADDRESS" whereas it was addressed to the address stipulated in MCA. That the copy of the Photograph depicting both the addresses, i.e., Registered office as well as the Corporate office is attached herewith. That the Operational Creditor had sent the Demand notice under section 8 to both the stipulated addresses.
- h. Counsel for the Respondent in this Application has placed reliance on the following case laws in support of his contentions:-
- i. Hon'ble National company Law Appellate Tribunal, New Delhi, in company Appeal(AT) (Insolvency) No. 684/2018 in the case of ALLOYSMIN INDUSTRIES VS RAMAN CASTING PVT.LTD.,
  - ii. Hon'ble National company Law Appellate Tribunal, New Delhi, in company Appeal(AT) (Insolvency) No. 1273/2019 in the case of BBIJAY PRATAP SINGH VS. UNIMAX INTERNATIONAL.
- i. That as per section 27 of the General Clauses Act, 1987 it is clearly stipulated, where any 2[Central Act] or Regulation made after the commencement of this Act authorizes or requires and document to be served by post, whether the expression "Serve" or either of the expressions "Give or send" or any other expression is used, then unless a different intention appears, the service shall be deemed to be effected by properly addressing,

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pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

- j. That even otherwise the intimation of the next date was sent to the other 3-mail used by the Applicant/Corporate Debtor namely mahimeghaagritech@gmail.com. That it is absolutely wrong vehemently denied that the Applicant/Corporate Debtor was not aware of the proceedings and filing of the instant Company Petition rather initially one Ms Chetan Reddy had appeared and sought to file the vakalatnama on behalf of the Applicant/Corporate Debtor.
- k. That the Adjudicating Authority is empowered under Rule 49(2) read with Rule 11 of the NCLT Rules, 2016, to set aside any ex-parte admission order however in the present case despite knowing the fact that the case was filed against the Applicant/Corporate Debtor and despite making a submission through Ms. Chetna Reddy to file the vakalatnama, the Applicant/Corporate Debtor has chosen not to participate in the proceedings.

4. That during the hearing held on 24.11.2022, an affidavit by Ms. Chetna Reddy came to be filed and abstract of the same is as under:-

“1) That on 04.08.2022, I was authorised by M/s. Vivek Sri Farms Pvt Limited, who are arrayed as Respondents in C.P(IB) No.

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232/9/HDB/2022 (Novel tech Feeds Pvt Limited vs Vivek Sri Farms Pvt Limited) to appear for and on their behalf before this Honourable Adjudicating Authority.

- 2) That on 04-08-2022, C.P(IB) No. 230/9/HDB/2022 (Novel tech Feeds Pvt Limited vs Mahimegha Agritech Limited) Vs listed as item no 1 and C.P(IB) No. 232/9/HDB/2022 (Novel tech Feeds Pvt Limited vs Vivek Sri Farms Pvt Limited) was listed as item No2 in the cause list for hearing before this Honourable Adjudicating Authority.
- 3) That whilst appearing before this Honourable Adjudicating Authority through Video Conference, I had mistakenly stated before this Honourable Adjudicating Authority that I am appearing for Respondent in item No1 (C.P(IB) No 230/9/HDB/2022) instead of item No 2 (C.P(IB) No. 232/9/HDB/2022).
- 4) That I sincerely apologise and regret for my mistake and the inconvenience so caused to this Honourable Adjudicating Authority and also to contesting parties namely M/s. Novel Tech Fees Pvt Limited and M/s. Mahimegha Agritech Limited (C.P(IB) No. 230/9/HDB/2022).
- 5) That I pray this Honourable Adjudicating Authority to condone my aforementioned mistake.
- 6) That on accounting of my wedding that was held on 20-11-2022 and my wedding reception on 22-11-2022, I was unable to attend in person before this Honourable Adjudicating Authority as directed and hence I pray that this Honourable

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Adjudicating Authority may please grant me leave of absence before this Honourable Adjudicating Authority.”

5. In light of the contest as aforementioned the point that emerges for consideration of this Adjudicating Authority is:

- **Whether the petitioner has made out sufficient ground for setting aside the *ex parte* admission order, dated 19.10.2022?**

6. We have heard Shri M. Maharshi Viswaraj, learned counsel for the petitioner and Shri N.B. Sudarshan, learned counsel for the 1<sup>st</sup> respondent. Perused the record and the case law submitted.

7. At the outset, it may be stated that in the absence of any express provision in the IB Code, 2016 either to set the Corporate Debtor *ex parte* or to set aside the said order, the parties are relying on Rule 49 read with Rule 11 of the National Company Law Tribunal Rules, 2016 (‘NCLT Rules’ for brevity).

8. It is, therefore, useful to refer herein Rule 49 of the NCLT Rules notified by the Ministry of Corporate Affairs vide Notification No.GSR 716 (E) dated 21<sup>st</sup> July 2016.

“49. *Ex-parte* Hearing and disposal.- (1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is

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*called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte. (2) Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit. Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.”*

9. Since it is the case of the petitioner/ Corporate Debtor herein that the Corporate Debtor was not duly served of the notice of the above application, it is imperative for the petitioner to establish that there was no due service of notice on the Corporate Debtor, lest the relief prayed in this application cannot be granted.

10. Rule 38 of NCLT Rules which is as below, provides for procedure for service of notice on the opposite party, when notice is ordered by the Tribunal.

*“38. Service of Notices and processes.- (1) Any notice or process to be issued by the Tribunal may be served by post or at the e-mail address as provided in the petition or application or in the reply; (2) The notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal; - (a) by hand delivery through a process server or*

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*respective authorised representative; (b) by registered post or speed post with acknowledgment due; or (c) service by the party himself. (3) Where a notice issued by the Tribunal is served by the party himself by hand delivery, he shall file with the Registrar or such other person duly authorised by the Registrar in this behalf, the acknowledgment together with an affidavit of service and in case of service by registered post or by speed post, file with the Registrar, or such other person duly authorised by the Registrar in this behalf, an affidavit of service of notice along with the proof of delivery. (4) Notwithstanding anything contained in sub-rules (1) and (2), the Tribunal may after taking into account the number of respondents and their place of residence or work or service could not be effected in any manner and other circumstances, direct that notice of the petition or application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient. (5) A notice or process may also be served on an authorised representative of the applicant or the respondent, as the case may be, in any proceeding or on any person authorised to accept a notice or a process, and such service on the authorised representative shall be deemed to be a proper service. (6) Where the Tribunal directs a service under sub-rule (4), such amount of charges, as may be determined by the Tribunal from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited with the registry of the Tribunal by the petitioner or applicant.”*

11. Insofar as the case on hand is concerned, on 04.08.2022, when the above Company Petition has been listed for the first time before this Tribunal, even before this Adjudicating Authority could order issue of notice in terms of Rule 38 of the NCLT Rules, 2016 to the Corporate Debtor, Ms. Chetna Reddy, learned advocate appeared through videoconference and submitted that she has been instructed by the

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petitioner/ Corporate Debtor herein to appear, therefore, she may be granted time to file Vakalat as well as counter, whereupon this Tribunal passed the following order on 04.08.2022:

*“Learned counsel for Operational Creditor appeared via video conference.*

*Before we could order notice to the Corporate Debtor, Ms. Chethana Reddy present and submitted that the Corporate Debtor had instructed her to file vakalat and therefore she seeks time. Let a Memo be filed undertaking to file vakalat on behalf of Corporate Debtor through e-filing by today and vakalat shall be filed within one week from today in the Registry. If not filed, the Corporate Debtor is deemed to have been set ex parte.*

*Two weeks’ time is granted for filing counter, if any, by giving a copy to the other side. The other side may file rejoinder, if any, within one week thereafter.*

*List the matter on 12.09.2022.”*

12. However, when the matter came up on 12.09.2022 neither Vakalat was filed nor any representation was made on behalf of the Corporate Debtor. The Corporate Debtor was also called absent. Under the circumstances, the Tribunal set the Corporate Debtor *ex parte*. Later, on 19.10.2022 the Tribunal has admitted the Company Petition and ordered CIRP against the Corporate Debtor.

13. Therefore, in the above undeniable factual backdrop, the plea of the Corporate Debtor that it was never served of any notice of the Company

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Petition and until 21.10.2022 the Corporate Debtor was unaware of the present proceedings, needs to be examined. Indisputably, on 04.08.2022 when the matter stood listed for the first time before this Tribunal, only on account of the submission of learned Advocate Ms. Chetna Reddy that she was instructed by the Corporate Debtor to appear in this matter, this Tribunal has not ordered notice to the Corporate Debtor, as such the Operational Creditor was not required to take notice to the Corporate Debtor. However, later it turned out that the representation made on 04.08.2022 by the learned Advocate Ms. Chetna Reddy was not on account of instructions of the Corporate Debtor but due to her inadvertent mistake, as per the affidavit filed by the learned advocate Ms. Chetna Reddy, which reads as under:

- “1) That on 04.08.2022, I was authorised by M/s. Vivek Sri Farms Pvt Limited, who are arrayed as Respondents in C.P(IB) No. 232/9/HDB/2022 (Novel tech Feeds Pvt Limited vs Vivek Sri Farms Pvt Limited) to appear for and on their behalf before this Honourable Adjudicating Authority.*
- 2) That on 04-08-2022, C.P(IB) No. 230/9/HDB/2022 (Novel tech Feeds Pvt Limited vs Mahimega Agritech Limited) Vs listed as item no 1 and C.P(IB) No. 232/9/HDB/2022 (Novel tech Feeds Pvt Limited vs Vivek Sri Farms Pvt Limited) was listed as item No2 in the cause list for hearing before this Honourable Adjudicating Authority.*
- 3) That whilst appearing before this Honourable Adjudicating Authority through Video Conference, I had mistakenly stated before this Honourable Adjudicating Authority that I am appearing for Respondent in item No1*

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*(C.P(IB) No 230/9/HDB/2022) instead of item No 2 (C.P(IB) No. 232/9/HDB/2022).*

4) *That I sincerely apologise and regret for my mistake and the inconvenience so caused to this Honourable Adjudicating Authority and also to contesting parties namely M/s. Novel Tech Fees Pvt Limited and M/s. Mahimega Agritech Limited (C.P(IB) No. 230/9/HDB/2022)."*

Thus, it is quite clear from the affidavit of the learned advocate, no instructions were received from the Corporate Debtor in this matter to appear for the Corporate Debtor on 04.08.2022, as such it cannot be said that as on 04.08.2022, the Corporate Debtor has been served of notice of this matter or instructed Ms. Chetna Reddy to appear.

14. That apart, the learned counsel for the Operational Creditor fairly admitted that the e-mail communication dated 23.09.2022 regarding the hearing on 04.08.2022, could not be delivered on account of a bona fide mistake in mentioning the correct e-mail ID of the Corporate Debtor. The postal cover purportedly containing the pre-filing notice to the Corporate Debtor in terms of Rule 6(4) of IBBI (Application to Adjudicating Authority) Rules, 2016 also returned unserved.

15. Therefore, in the above backdrop, it cannot be said that the Corporate Debtor has been 'served' much less 'duly served' of notice of

the hearing of this matter on 04.08.2022. Therefore, when once it is established that the Corporate Debtor was not served of notice of the Company Petition filed under section 9 of the IB Code, 2016, order of this Tribunal dated 19.10.2022, initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor is liable to be set aside. Therefore, we hereby set aside the order dated 19<sup>th</sup> October 2022, whereby we have admitted the Corporate Debtor into CIRP, by allowing this petition, however, on condition that the Corporate Debtor shall file counter, if any within 10 (ten) days from the date of this order. In default, this application stands dismissed.

16. Consequently, the interim moratorium stands vacated and the Corporate Debtor is at liberty to function on its own. However, the Corporate Debtor will be liable for the CIRP costs, if any incurred till date. We direct the Registry to list the mater on 23.12.2022 for hearing.

17. In the result, IA (IBC) No.1291 of 2022 is allowed accordingly. No costs.



SATYA RANJAN PRASAD  
MEMBER (TECHNICAL)



DR. N.V. RAMAKRISHNA BADARINATH  
MEMBER (JUDICIAL)

Rathi/ karim