

S.No.9

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1**
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
03-06-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE

Company Petition IB/275/2021
U/s 9 of IBC, 2016

IN THE MATTER OF:

Gayatri Sea Foods and Feeds Pvt Ltd

...Operational Creditor

Vs

Kumar Aquatech Agencies Pvt Ltd

...Corporate Debtor

C O R A M:-

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

ORDER

Order in CP (IB) No.275 of 2021 is pronounced recorded vide separate sheets.
In the result this application is allowed. The Corporate Debtor is put under CIRP as
per the terms and conditions mentioned in the order.

Sd/-

MEMBER (T)

Karim

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-1**

CP (IB) No.275/9/HDB/2021

U/s. 9 of Insolvency & Bankruptcy Code, 2016

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

In the matter of:

M/s Gayatri Sea Foods and Feeds Private Limited
Flat No. 203, 6-3-1099/1/2/3, Bhavyas Varun Sargam,
Behind Katriya Hotel, Rajbhavan Road, Somajiguda,
Hyderabad- 500004
Through Kasi Srinivas, Resolution Professional

...Operational Creditor

Versus

M/s Kumar Aquatech Agencies Private Limited
H. No. 8-3-991, Flat No 202, Kamala Residency,
Opposite SBI, Sri Nagar Colony,
Hyderabad-500073, Telangana

... Corporate Debtor

Date of Order: 03.06.2022

Coram:

Dr. Venkata Ramakrishna Badrinath Nandula, Hon'ble Member (Judicial)

Sh. Veera Brahma Rao Arekapudi, Hon'ble Member (Technical)


Parties/Counsels present:


For the Applicant/RP: Mr. A. Chandra Shaker, Advocate

For the Respondent: Mr. CH. Srinivasulu, Advocate

PER BENCH

1. This Application is filed by M/s Gayatri Sea Foods and Feeds Private Limited (*Hereinafter referred as Operational Creditor*) represented through its Resolution Professional Shri. Kasi Srinivas, under Section 9 of Insolvency and Bankruptcy Code (*Hereinafter to be referred as "Code"*), read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiation of Corporate Insolvency Resolution Process (CIRP) against M/s Kumar Aquatech Agencies Private Limited (*Hereinafter referred as Corporate Debtor*), alleging non-payment of Rs. 13,48,23,368/- (*Rupees Thirteen Crores, Forty Eight Lakhs, Twenty Three Thousand Three Hundred and Sixty Eight Only*), said to be due and payable by Corporate Debtor to Operational Creditor
2. **The Contentions as put-forth by the Operational Creditor are:**
 - 2.1. It is submitted that the Operational Creditor was a Private Limited Company incorporated under the Companies Act, 1956, having CIN No. U63020TG2008PTC057168. The Operational Creditor further stated that it was engaged in the business of establishment and manufacture of modern cold storage and deep freezing plant capable of preserving all kinds of food stuffs, chemicals, drugs, fruits, vegetables, fish meat and all other eatable and to give the abovementioned services on hire.
 - 2.2. As the said Operational Creditor was under Corporate Insolvency Resolution Process vide the order of this Tribunal in CP (IB) No. 469/9/HDB/2019 dated 13.01.2021, this Application was filed by the Resolution Professional.

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- 2.3. It is submitted that the Corporate Debtor is a Private Limited Company incorporated under the Companies Act, 1956. Its authorised share capital and its paid up capital were Rs. 4,00,00,000/- respectively.
- 2.4. It is contended that the supplies of the material under the invoices dated 13.08.2020 to 20.12.2020, the Corporate Debtor is required to pay a sum of Rs. 13,48,23,368/- to the Operational Creditor, which he defaulted.
- 2.5. As the Operational Creditor is a going concern several reminders were made by the Resolution Professional to Corporate Debtor. Thereafter, pursuant to Section 8(1) of the Code, the Operational Creditor issued the Demand Notice dated 16.07.2021 to Corporate Debtor in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Speed Post demanding payment of dues in respect of which feed was supplied by the Operational Creditor.
- 2.6. It is submitted that the Demand Notice was deemed to have been served on the Corporate Debtor on 27.07.2021, as it was unclaimed by the Corporate Debtor despite intimation. The period of 10 days from the date of receipt of demand notice ended on 06.08.2021 but the Corporate Debtor failed to pay the said dues. Thereafter, the Committee of Creditors (*Hereinafter referred as CoC*) resolved to the Resolution Professional to file application before this Tribunal.




2.7. It is further submitted by the Operational Creditor that vide memo dated 21.10.2021 that Demand notice was served twice, where in, in first instance it was unserved and in second it was refused on the address and lastly Paper publication was also done. As this Tribunal vide its Order dated 27.10.2021 had directed the Operational Creditor to serve notice to Corporate Debtor by speed post as well as email. The same was sent by speed post and not delivered with endorsement, door locked.


2.8. It is submitted that after serving of demand notice no dispute was raised on the outstanding dues by the Corporate Debtor under Section 8 (2) of the Code. Further in accordance with Section 9(4) of the Code, the Operational Creditor had given the name of Mr. Dommeti Surya Rama Krishna Saibaba for appointment as Interim Resolution Professional. Hence this present Application is filed under Section 9 of the Code.

3. **The Contentions as put-forth by the Corporate Debtor in the Counter Affidavit are:**

3.1. It is stated that the Application filed by the Operational Creditor represented through its Resolution Professional Shri. Kasi Srinivas claiming a sum of Rs. 13,48,23,368/- was neither maintainable under law nor on merits

3.2. It is stated that the claim was mainly on the sixty dummy invoices claiming a sum of Rs. 13,48,23,368/- for supply of the Feed material. Further the Resolution Professional was not authorized by the CoC as no resolution was enclosed with the Application.

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- 3.3. It is submitted that no goods were supplied by the Operational Creditor on mentioned dates in the invoice and the Resolution Professional also failed to verify the same.
- 3.4. It is further submitted that the Invoices were silent and did not disclose the dates on which purchase orders were placed nor in which premises the goods were delivered and through which vehicle they were delivered and whether any GST had been paid to the Government or not.
- 3.5. It is submitted that the Invoices enclosed in the Application, did not show the signature of the Operational Creditor nor the Corporate Debtor, only attested signature of Resolution Professional was shown to be present.
- 3.6. It is submitted that the Corporate Debtor did not receive Demand Notice in Form 3 and Form 4 on the registered address as maintained with the Registrar of Companies, Hyderabad and the amount so claimed was not legally enforceable debt and does not fall under the definition of Operational Debt as per the provisions of the Code.
4. **The Contentions as put-forth by the Operational Creditor in its written submissions are:**

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- 4.1 It is submitted that the Operational Creditor was under Liquidation and the present application was filed by the Liquidator upon the directions of the CoC vide resolution dated 13.08.2021.
- 4.2 It is submitted that the material supplied by Operational Creditor to Corporate Debtor was evidenced in the Ledger Balances. The same was not rebutted by the Corporate Debtor in its Counter Affidavit by placing any material.
- 4.3 It is submitted that no legal and valid dispute with regard to the claim amount was raised by the Corporate Debtor and also failed to show prior dispute in regard to the claimed amount.
5. The Corporate Debtor in its written Submissions denied the averments in the application and reiterated the contentions as put forth in counter affidavit.
6. In light of the pleadings as above the following point emerges for consideration by this Adjudicating Authority
- i. Whether the Documentary Evidence furnished by the Applicant shows that an Operational Debt as claimed by the Applicant is due and payable by Corporate Debtor, if so whether the Corporate Debtor has defaulted in the payment of the same to Applicant?**
7. We have heard Shri. A. Chandra Shaker Learned Counsel for Operational Creditor and Shri. CH. Srinivasulu for Corporate Debtor, perused the record.

POINT (i)

8. Whether the Documentary Evidence furnished by the Applicant shows that an Operational Debt as claimed by the Applicant is due and payable by Corporate Debtor, if so whether the Corporate Debtor has defaulted in the payment of the same to the Applicant?

8.1. According to the Learned Counsel for the Applicant the copies of invoices and the Ledger of the Corporate Debtor filed, categorically discloses that an amount of Rs. 13,48,23,368 is due and payable by the Corporate Debtor towards the supply of feed material by the Operational Creditor to the Corporate Debtor. Learned Counsel, further submitted that, the said amount was not paid by the Corporate Debtor despite issuance of demand notice, hence present application has been filed. In support of the pleas put forth in the application Learned Counsel for the Operational Creditor relied on the Ledger Account, and the invoices, for the period between 13.08.2020-21.10.2020. According to the Learned Counsel for the Applicant these books of Accounts and records of Operational Creditor amply prove the supply of feed material were made by the Operational Creditor.

8.2. Per Contra, Learned Counsel for the Corporate Debtor submitted that the Application has been filed with an ulterior motive to drag Corporate Debtor into litigation. Learned Counsel further submitted that the claim is based on 60 dummy invoices for the alleged supply of feed material, and no such feed material has ever been supplied by Operational Creditor to the Corporate Debtor. Learned Counsel further submitted that there are no GST references

in any of the invoices submitted in compilation of invoices by the RP. Hence the application is liable to be dismissed.

8.3. We found from the records that the Operational Creditor is undergoing Liquidation. The Resolution Professional basing on the books of Accounts of Operational Creditor has made attempts to recover the amount due from the Corporate Debtor as shown in the books, unsuccessfully. Hence, the Resolution Professional sent the Demand Notice dated 16.07.2021 under Section 8 (2) of the IBC, 2016 in Form 3 and Form 4 to the Corporate Debtor demanding payment dues. According to the Learned Counsel the said demand notice was deemed to have been served on Corporate Debtor, as the postal endorsement states that the notice has been returned with an endorsement 'unclaimed'. Learned Counsel for the Corporate Debtor have contended that the Corporate Debtor has not received the Demand Notice.

8.4. Here, it would be useful to refer Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, which is as follows:


"5. Demand notice by operational creditor.-

(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely.-

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4.

(2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,

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- (a) *at the registered office by hand, registered post or speed post with acknowledgement due; or*
 - (b) *by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor,*
 - (3) *A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any."*

8.5. The Operational Creditor had sent Demand Notice through Speed Post as per the record filed before this Tribunal. Therefore, there is sufficient compliance of the above Rule insofar as it relates to sending Demand Notice to the Corporate Debtor is concerned. However, the said Demand Notice has been returned by the Postal authorities with a remark, "Unclaimed. Returned to sender".

8.6. On the facts and in the circumstances of the case it is apt to refer to Section 27 of the General Clauses Act, 1897, which reads as under:


"27. Meaning of service by post.- Where any (Central Act) or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression in used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing prepaying 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."

8.7. The Hon'ble Supreme Court, while dealing with a case relating to service of notice under Section 138 of the Negotiable Instruments Act, 1881 viz. K.

Bhaskaran vs. Sankaran Vaidhyan Balan and another (1999) 7 SCC 510
observed as under:

"The principle incorporated in Sec. 27 therein could profitably be imported in a case where the sender had dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the addressee, unless he proves that it was not really served and that he was not responsible for such non-service. But that would be without prejudice to the right of the drawer of the cheque to show that he had no knowledge that the notice was brought to his address."

- 8.8. Since the postal cover sent to the address of the Corporate Debtor has been returned by the Postal authorities as 'unclaimed' such service could be treated as sufficient service in view of Section 27 of the General Clauses Act, 1897 and in light of the decision of the Hon'ble Supreme Court in the matter of K. Bhaskaran vs. Sankaran Vaidhyan Balan (supra).
- 8.9. In so far as to the main submission of the Learned Counsel for the Corporate Debtor that no supplies under the invoices, supra, were received by the Corporate Debtor and the invoices as filed are dummy is concerned, which plea since denied by the Operational Creditor, we have carefully perused the invoices and the undisputed corresponding entries in the Ledger account of the Corporate Debtor.
- 8.10. A bare perusal of the Ledger Statements furnished by the Applicant discloses that part payments were made by Corporate Debtor against each of the invoices raised by the Applicant, between 13.08.2020 and 20.10.2020. Therefore, if really the Corporate Debtor has not received the material under the above invoices, then why the corporate debtor has made part payments



in respect of each of the invoices, as shown in the ledger is not explained by the Learned Counsel for the Corporate Debtor. That apart, the payments by Corporate Debtor certainly stands as proof of delivery of goods under the invoices mentioned above. Hence the defence raised by the Corporate Debtor that goods are not delivered shall fail.


8.11. Therefore, in light of our discussion as above made by both parties, we have no hesitation to conclude that there is an operational debt due and payable by the Corporate Debtor, in respect of the supplies made by Operational Creditor, under the invoices mentioned supra, and that the Corporate Debtor has defaulted in payment of the same.

8.12. Since operational debt and default by the Corporate Debtor stands proved this Application deserves to be admitted.

8.13. The Operational Creditor has suggested the name of Shri. Dommeti Surya Rama Krishna Saibaba, who has filed Form-2. His Authorization for Assignment is valid till 16.11.2022 as per IBBI Website. The Petition is complete in all respects. Therefore, we are of the considered view that the petition merits favourable consideration.

9. Accordingly, the Adjudicating Authority admits this Petition under Section 9 of the Code declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:

(A) 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 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;

- (B) 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.
- (C) 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.
- (D) That the order of moratorium shall have effect from the date of this order 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.
- (E) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under Section 13 of Insolvency and Bankruptcy Code, 2016.

(F) The Operational Creditor proposed the name of Shri. Dommeti Surya Rama Krishna Saibaba, as Interim Resolution Professional and he has given his consent in Form-2 dated 23.08.2021 and Authorization for Assignment is valid upto 16.11.2022. Accordingly, this Adjudicating Authority hereby appoints Shri. Dommeti Surya Rama Krishna Saibaba having IBBI Registration No. IBBI/IPA-003/IP-N00165/2018-2019/12106, whose contact details are:

E-mail: dsrk39@yahoo.com

Address: Flat No. A-105, Mahindra Ashvita, Hafeejpet Road, Near Hi-Tech City MMTS Railway Station, KPHB Colony, Hyderabad, Telangana, 500085

(G) The Registry of this Tribunal and the Operational Creditor is directed to send a copy of this order to the appointed Interim Resolution Professional and Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.

(H) Accordingly, this Petition is admitted.

Sd/-

VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

Sd/-

DR. N V RAMAKRISHNA BADARINATH
MEMBER (JUDICIAL)

Rohit (LRA)

