

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH**
(through web-based vide conferencing platform)

IA No.861/2022 & IA No.862/2022
in
CP(IB) No.125/Chd/Hry/2021
(Admitted)

Under Section 60 (5) of the
Insolvency and Bankruptcy
Code, 2016

In the matter of:-

Aviagen India Poultry Breeding Company Pvt. Ltd. ...Operational Creditor

Versus

Hygiene Feeds & Farms Pvt. Ltd. And Others ...Corporate Debtor

Order delivered on 17.08.2022

**Coram: HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SHRI SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing :-

For the Applicant	:-	Mr. Vikas Lochab, Advocate
For the Resolution Professional	:-	Mr. Varinder Chhibbar, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

ORDER

IA No.861/2022 & IA No.862/2022

Both these applications bearing IA Nos.861/2022 and IA No.862/2022 are taken up together for disposal being interrelated and interconnected.

2. IA No.861/2022 has been filed by Hygiene Feeds & Farms Private Limited (for short the '**applicant/corporate debtor**') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (for short the '**Code**') read with Rule 11 of the National Company Law Tribunal Rules, 2016, seeking setting aside of order dated 11.01.2022, whereby the applicant/corporate debtor was proceeded ex-parte.

3. IA No.862/2022 has been filed by applicant/corporate debtor under Section 60(5) of the Code with Rule 11 of the National Company Law Tribunal Rules, 2016, for recalling the order dated 18.07.2022, vide which this Adjudicating Authority has initiated the Corporate Insolvency Resolution Process (for short the '**CIRP**') against the applicant/corporate debtor by admitting CP(IB) No.125/Chd/Hry/2021.

4. The brief facts of the case necessary for deciding the core controversy involved in the instant case are that Aviagen India Poultry Breeding Company Private Limited (for short the '**operational creditor**') had filed a petition under Section 9 of the Code for initiation of the CIRP against the corporate debtor.

5. When the petition filed by the operational creditor under Section 9 of the Code came up for hearing before this Adjudicating Authority, this Adjudicating Authority vide order dated 07.07.2021 issued notice of the petition to the applicant/corporate debtor to show cause as to why the petition be not admitted and directed the operational creditor to serve notice to the applicant/corporate debtor through e-mail as well as speed post. Vide the said order, it was also directed that in case the service through speed post is not effected then the operational creditor shall adopt the mode of substituted service and notice of hearing be advertised in two newspapers (one English and one Hindi) having wide circulation in the area. The operational creditor was also directed to file affidavit of service along with postal receipt, tracking report, copy of e-mail and newspapers clippings, if applicable. The order dated 07.07.2021 also provided the opportunity to the applicant/corporate debtor to file the reply to the petition preferred by the operational creditor.

6. In compliance of order dated 07.07.2021, the operational creditor filed affidavit of service vide Diary No.00526/01 dated 13.08.2021 wherein it was deposed that complete copy of petition and entire paper book along with copy of

order and notice was served upon the applicant/corporate debtor vide Speed Post receipt No.ED948642927IN on 16.07.2021. However, the same was returned back on 24.07.2021 with remarks '*refused to accept*', copy of postal receipt and original speed post article which was returned back, has been annexed with the said affidavit. Further, it has been deposed that soft/scan copy of order and notice was also served upon the applicant/corporate debtor through e-mail and the same has been delivered and has not bounced back, copy whereof has also been annexed with the said affidavit.

7. When the matter was listed on 27.10.2021, the operational creditor was directed to adopt the mode of substituted service. In compliance of the said order, the operational creditor filed affidavit of service vide Diary No.526/03 dated 29.04.2021, vide which it had been deposed that in furtherance of order dated 27.10.2021, the operational creditor had published the notice in two newspapers one in English- 'The Times of India' and another in Hindi- 'Dainik Savera Times' on 17.11.2021 within the area of the registered office of the applicant/corporate debtor. Original newspaper clippings of newspapers dated 17.11.2021 have been annexed as Annexure B with the said affidavit.

8. This Adjudicating Authority, after observing that despite service by newspaper publication there is no representation on behalf of the applicant/corporate debtor, vide order dated 11.01.2022 proceeded against the respondent ex-parte and listed the matter for ex-parte arguments. Thereafter, vide judgment dated 18.07.2022, this Adjudicating Authority admitted the petition filed by the operational creditor and initiated the CIRP against the applicant/corporate debtor.

9. During the course of arguments, it was contended by the learned counsel for the applicant/corporate debtor that ex-parte order dated 11.01.2022 was not in his knowledge. Similarly, it was submitted by him that when order dated 18.07.2022 for initiation of CIRP against the corporate debtor was passed, the defence of applicant/corporate debtor was not available on record. Therefore, it is prayed by learned counsel for the applicant/corporate debtor that one opportunity for filing his defence by submitting reply/written statement be given to him as non-appearance of the applicant was neither intentional nor wilful.

10. These applications are opposed by learned counsel for the Resolution Professional by contending that these applications are not maintainable as CIRP has already been initiated against the corporate debtor.

11. After hearing the learned counsels for the applicant/corporate debtor and Resolution Professional as well as after careful perusal of the record, it is evident that the applicant/corporate debtor, at the outset, refused to accept the notice sent by the operational creditor through speed post which is evident from the postal endorsement on the envelope of the speed post. However, through e-mail, as available on the master data of the applicant/corporate debtor, the soft/scan copy of order dated 07.07.2021 along with notice for appearance was served upon the applicant/respondent corporate debtor and the same was delivered and not bounced back. Copy of affidavit to that effect filed by the operational creditor is already on record.

12. A perusal of order dated 27.10.2021, passed by this Adjudicating Authority, shows that as an abundant precaution and without prejudice to the rights of the applicant/corporate debtor, the mode of substituted service i.e. service through newspaper publication was ordered to be adopted by the operational creditor and the notice of hearing was advertised in two daily newspapers one in 'The Times of

India' (English) and another in 'Dainik Savera Times' (Hindi) and affidavit of service along with newspaper clippings have been already placed on record by the operational creditor.

13. A perusal of the case file shows that the matter pertains to the year 2021 and it was only after giving several opportunities to the applicant/corporate debtor that this Adjudicating Authority was constrained to pass order dated 11.01.2022, vide which the applicant/corporate debtor was proceeded ex-parte. Even thereafter, for six months, none appeared on behalf of the applicant/corporate debtor and when judgment dated 18.07.2022 initiating the CIRP against the applicant/corporate debtor was passed. It was only thereafter that applications bearing IA No.861 of 2022 (e-filed on 27.07.2022, hard copy filed on 28.07.2022) and IA No.862 of 2022 (e-filed on 21.07.2022, hard copy filed on 28.07.2022) were moved by the applicant/corporate debtor. It is apparent that applicant/corporate debtor could not justify its non-appearance despite service of notice.

14. Keeping in view the aforementioned facts and circumstances, we are of the view that judgment 18.07.2022 cannot be re-called or set-aside as the CIRP has already been initiated and is a time bound process under the provisions of the Code. Since order dated 11.01.2022 has merged into judgment dated 18.07.2022, therefore, the same is rendered redundant after passing the judgment dated 18.07.2022.

15. In view of the above discussion, we do not find any plausible ground to set-aside/recall judgment dated 18.07.2022. Accordingly, IA No.861/2022 and 862/2022 are dismissed. No order as to costs.

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

August 17, 2022
MK

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