

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Video Conference)**

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 20.07.2022 AT 11.00 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No.52/9/AMR/2021	IA(IBC)/61/2022	9 of IBC	Gayatri Sea Foods and Feeds pvt Ltd Vs Apex Aqua Agencies Pvt Ltd

Counsel for Petitioner(s):

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Ries

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

At request of both the parties for hearing, list the matter on 28.07.2022.

IA(IBC)/61/2022:

This application is disposed of, vide separate orders.

Sd/-

**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

**I.A.No.61 of 2022
IN
CP (IB) No.52/9/AMR/2021**

**Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 Read
with Rules 11 of the National Company Law Tribunal Rules, 2016**

In the matter of
M/s. APEX AQUA AGENCIES PRIVATE LIMITED

BETWEEN:

Mr. Kurapati Singarayya Choudary,
Former Resolution Professional for
M/s. Apex Aqua Agencies Private Limited
Flat No.101, Sheshadri Towers, G16A,
Madhura Nagar, Yousufguda, Hyderabad -500038.

.... Applicant/ Former Resolution Professional

AND

1. M/s. Apex Aqua Agencies Private Limited,
Door No.40-5/3-1B, A2, Block No.A, Land Mark Pride,
Patamata, Vijayawada -520011.

... Respondent No.1/Corporate Debtor

2. M/s. Gayatri Sea Foods and Feeds Private Limited,
Rep.by its Resolution Professional Mr.Kasi Srinivas,
Flat No.203, 6-3-1099/1/2/3, Bhavyas VarunSargam,
Behind Katriya Hotel, Rajbhavan Road,
Somajiguda, Hyderabad – 500004.

.... Respondent No.2/Operational Creditor

Date of Order pronounced on: 20.07.2022

Coram:

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Applicant : Ms.Mummaneni Vazra Laxmi, Advocate
For the Respondent No.1 : Mr.V.S.R.Avadhani, Advocate
For the Respondent No.2 : Mr.Kasi Srinivas, RP

ORDER

1. This application is filed by the Former Resolution Professional (RP) seeking for a direction to the Respondents to pay Corporate Insolvency Resolution Process (CIRP) costs incurred by the Applicant to an extent of Rs.6,39,130/- till the date of setting aside the order dated 25.11.2021 in CP (IB) No.52/9/AMR/2021.
2. Counsel for the 1st Respondent filed counter contending that the CIRP costs cannot be imposed on the Respondent No.1/Corporate Debtor, since, the notice which was allegedly served on the Corporate Debtor was held to have not been properly served, by virtue of the order of this Tribunal dated 14.03.2022 which is passed in Application filed seeking to set aside the ex-parte order. The observations of this Tribunal, in the said order are as follows:

“3. Heard the arguments of both sides. The Counsel for the Applicant draws the attention of this court to the proof

of service filed by the Respondent No.1 which shows that the consignment i.e., the notice was booked on 17.07.2021 and not on 16.07.2021 as mentioned in the counter and was delivered on 27.07.2021 but not on 20.07.2021 as mentioned in the counter. He also submits that the notice sent by the Tribunal is on 22.11.2021 by which date the Applicant has shifted his office to Vijayawada. The Counsel for the Respondent No.1 draws that attention of this Tribunal to Annexure –D filed along with the main Petition which is Form No.INC 22, according to which, the office was shifted to Vijayawada on 03.08.2021 itself. On the basis of the undisputed fact that the notice as per the proof of service is delivered on 27.07.2021 and not on 20.07.2021, the Counsel for the Applicant contends that the said notice must have been a notice which was sent to some other person but not to this Applicant.

4. *The Above argument would prove that there is sufficient discrepancy with regard to the service of notice. Hence considering the above, I opine that a fair chance to contest the case need to be given to the Applicant/Corporate Debtor for the matter to be decided on merits. Hence the Application is allowed and*

*the ex-parte order dated 25.11.2021 in
CP.No.52/9/AMR/2021 is set aside.”*

3. The Counsel for the Respondent/Corporate Debtor relies on the judgment of Hon'ble Supreme Court in ***Civil Appeal No.4044 of 2020 between Rajkumar Brothers and Production Private Limited Vs. Harish Amilineni Shareholder and erstwhile Director of Amilionn Technologies Private Limited & Another***, wherein, in similar circumstances, the Supreme Court held that the Operational Creditor therein would be liable for CIRP costs and that the Corporate Debtor cannot be saddled with the costs of CIRP.
4. Hence, in view of the above said judgment, IA (IBC) No.61/2022 is disposed of with a direction to the Operational Creditor/State Bank of India (CoC member) to bear the CIRP costs incurred by the Applicant.

SD/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu