

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.302
CP (IB) No.223/AHM/2021

Order under Section 9 of IBC, 2016

IN THE MATTER OF:

Godrej Agrovet Ltd

.....Applicant

V/s

Oasis Marine Pvt Ltd

.....Respondent

Order delivered on: 19.03.2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
(COURT-I)**

CP (IB) No.223/AHM/2021

*(Application under Section 9 of the Insolvency and
Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency
and Bankruptcy (Application to Adjudicating Authority)
Rules, 2016)*

IN THE MATTER OF:

Godrej Agrovat Ltd

Registered office at:
Godrej One, 3rd Floor,
Pirojshanagar, Eastern Express
Highway, Vikhroli (East),
Mumbai Maharashtra- 400079

**Applicant/
Operational
Creditor**

VERSUS

Oasis Marine Pvt Ltd

Registered office at:
Office No 320, Luxuria
Business Hub, Near Dumas
Resort, Dumas Road, Surat,
Gujarat-395007

**Respondent/
Corporate
Debtor**

Order pronounced on: 19.03.2024

CORAM:

**MR. SHAMMI KHAN (MEMBER JUDICIAL)
MR. SAMEER KAKAR (MEMBER TECHNICAL)**

APPEARANCE:

For the Applicant/O.C. : Mr. Salil M Thakore, Ld. Adv.

For the Respondent/C.D. : Mr. Pratik Thakkar, Ld. Adv.

O R D E R

1. The Present Application was filed on 27.10.2021 by **Godrej Agrovat Ltd** (hereinafter referred to as “**the Applicant/Operational Creditor**”) against **Oasis Marine Pvt Ltd.** (hereinafter referred to as “**the Respondent/Corporate Debtor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (in short “**CIRP**”) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for having defaulted payment of the operational debt of **Rs.6,19,57,977/-** including interest.
2. On perusal of Part-I of the Form-V reveals that the Applicant/Operational Creditor is Godrej Agrovat Limited having CIN No. L15410MH1991PLC135359. The registered office of the

Applicant/Operational Creditor is situated at Godrej One, 3rd Floor, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai, Maharashtra- 400079.

3. On perusal of Part-II of the Form-V reveals that the Respondent/Corporate Debtor is one Oasis Marine Pvt Ltd having CIN No. U05003GJ2011PTC064243. The registered office of the Respondent/ Corporate Debtor is situated at Office No 320, Luxuria Business Hub Near Dumas Resort, Dumas Road, Surat, Gujarat-395007. An affidavit for filing this application is signed by one Mr. Upendra R. Pathak, General Manager (Secretarial & Legal) and authorized representative of Applicant authorized by Board Resolution dated 14.09.2021 which is annexed to the Petition.

4. On perusal of Part-III of the Form-V reveals that the Applicant/Operational Creditor has proposed the name of Mr. Arpan Maheshkumar Shah having Registration No. IBBI/IPA-001/IP-P-01847/2019 -2020/12862 and having office at 301, Shoppers Plaza-4, Opp. BSNL, C.G. Road, Navrangpura, Ahmadabad, Gujarat, 380009 to be appointed as Interim Resolution Professional.

5. On perusal of Part-IV of the Form-V reveals that total dues as claimed by the Applicant/Operational Creditor is Rs.6,19,57,977/- consisting of Rs.4,61,69,261 /- being principal and interest thereon calculated at 18 % per annum.
6. The averments made by the Applicant in its application are summarized hereunder:-
 - a) The Applicant was regular supplier of goods being aqua feed (shrimp/ fish feed) supplied by Operational Creditor to the Respondent during the period starting from August 2019 to December 2020 as per orders placed by the Respondent. Both the parties entered into a distribution agreement for supply of goods being aqua feed (shrimp/ fish feed) whereupon the Applicant supplied goods and raised invoices from 17.08.2019 to 15.12.2020 on the Respondent are unpaid.
 - b) On 08.03.2021, Operational Creditor sent a letter to the Corporate Debtor requesting confirmation on the outstanding principal amount of Rs. 4,61,69,261/- which was accepted by the Mr. Hemant Patel director of Corporate Debtor.
 - c) The operational Creditor by notice dated 14.05.2021 through email dated 15.05.2021, called upon the Corporate

Debtor to pay outstanding amount of Rs. 4,62,21,191/- to which Corporate Debtor did not replied and did not dispute the contents thereof.

- d) Upon receiving the notice, Corporate Debtor issued 3 cheques i.e. 1,54,21,191/- dated 25.05.2021, 1,54,0,000/- dated 29.05.2021 and 154,00,000/- dated 05.06.2021 aggregating to Rs. 4,62,21,191/- drawn on Kotak Mahindra Bank Ltd. in favour of the Operational Creditor. On 31.05.2021 cheques dated 25.05.2021 and 29.05.2021 were dishonored. Further, on 14.06.2021 cheque dated 05.06.2021 dishonored.
- e) On 05.06.2021, 19.06.2021 and 14.07.2021, the Operational Creditor issued notice under Section 138 of the Negotiable Instrument Act, 1881 with respect to the dishonored cheques upon receiving the notice, the Operational Creditor did not make any payment but sent a vague evasive reply.
- f) The Corporate Debtor has committed a default in paying the aforesaid operation debt to the Corporate Debtor. The Operational Creditor issued demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 on 21.07.2021 for the total outstanding of Rs. 6,02,37,287/-. The demand notice was delivered to the Corporate Debtor on 26.07.2021. The Corporate Debtor has replied to the demand notice on 27.08.2021 and did not raise any dispute to the demand issued.

7. The Respondent has filed its reply on **20.07.2022 vide inward no. D3888** the averments of the Respondent in the reply are stated below:-

- a) Invoices claimed by Applicant in Form-5 are barred by Section 10A of the Insolvency and Bankruptcy Code, 2016, the total amount of Invoices which are barred under Section 10A are aggregating to Rs. 2,04,69,552/- having due date from 25.03.2020 to 25.03.2021 which are hit under the provisions of Section 10A. Hence, the claim for the amount of Rs. 2,04,69,552/- is not maintainable.
- b) It is stated that the Corporate Debtor have made the payment in respect of the pending invoices and payment made comes down to Rs. 1,64,35,508/-.
- c) It is stated that the cheques which were used by the Applicant on 01.04.2021 and 31.03.2021 were issued back on 01.05.2018 and 28.06.2018 which can be shown from their sequence of the cheque numbers which are used by the Corporate Debtor currently as well as in year 2018.
- d) It is stated that considering the total amount of debt comes down to less than Rs. 1.00 Crores upon exclusion of the invoices barred by Section 10A.

Thus, the present application becomes non-maintainable.

e) It is stated that the Interest can never be part of the operational debt as per the provisions of Section 3(11), 3(12) and 5 (21) of the Code. Ever otherwise there was no agreement between the parties for interest at the rate of 18% as claimed in the present petition. Hence, the petition deserves to be dismissed.

8. The Applicant filed a rejoinder to the reply of the Respondent on **31.01.2023** vide inward no. D383 and made the following submissions:-

a) The Applicant states that the Petition is neither defective nor vague. The petition is in accordance with the provisions of IBC and the Rules and Regulations thereunder. The Petition is not barred under Section 10A or by Section 4 of the Code.

b) The Applicant states that the default had arisen well before to 25.03.2020. Therefore, Section 10A has no application whatsoever or to any part thereof. The Applicant denies that invoice aggregating to Rs. 2,04,69,552/- or any part thereof are barred by Section 10A of the Code.

Even assuming for the sake of argument that the invoice raised between 25.03.2020 to 25.03.2021 are to be excluded, the total amount even after such exclusion exceeds the threshold amount of Rs. 1.00 Crore provided under Section 4 of the Code.

c) The Applicant states that the Corporate Debtor had not made any payment to the Applicant in for the total operation amount due of Rs. 4,61,69,261/- and the said amount continues to be outstanding as on today.

d) Operational Debt in the petition is crystallized at Rs. 4,61,69,261/- and the invoices against which the Operational Debt is due stipulates that the Respondent would be liable to pay interest at 18% per annum if the invoices are not cleared on their due dates. Even otherwise the bar under amended section 4 of the IBC, 2016 would not apply as the debt fell due much prior 24.03.2020.

9. The Applicant filed its Submission in brief on 28.02.2024 vide Inward dairy No. D7806 in which the applicant stated that the Corporate Debtor has admitted its liability of Rs. 4.62 crores. In its reply filed

in July, 2022, Corporate Debtor has stated that an amount of Rs. 2.17 Crore fell in Section 10A Period. When the total principal admitted to be payable is Rs. 4.62 crores and the Section 10A amount is 2.17crore (as per response of Corporate Debtor), the non-Section 10A will be the balance Rs. 2.45 crore. Such amount is above Rs. 1.00 crore, the threshold for filing a Section 9 of IBC petition. Hence, petition is maintainable and not barred by Section 10A of IBC.

10. The Corporate Debtor filed its revised chart excluding the invoice barred by Section 10A of the Insolvency and Bankruptcy Code 2016 on 15.12.2023 vide Inward dairy No. D4990.

11. We have heard the Ld. Counsel for both the parties and perused the material available on record.

12. It is noted that the Applicant was regular supplier of goods being aqua feed (shrimp/ fish feed) supplied to the Respondent and maintained running accounts for their transactions, out of said transactions an amount of Rs.

4,61,69,261/- was payable by Respondent to Applicant. The Respondent defaulted in paying said amount. Therefore, the Applicant issued demand notice dated 27.07.2021 claiming an amount of Rs. 6,02,37,287/-. As reply to demand notice dated 27.08.2021 was received. Thereafter, the Applicant proceeded to file an application under section 9 of IBC, 2016 bearing C.P. No. 223 of 2021.

13. It is observed that no specific date of default is mentioned in the application. Therefore, we proceed to consider the date of default to be 24.06.2021 i.e. 180 days from the invoice dated 26.12.2020 as per the terms of invoice. Moreover, the said default is not covered under the period exempted under Section 10A of IBC, 2016. All the subsequent events that is confirmation of accounts, issuance of demand notice, payment by Respondent, emails of Director of Respondent (wherein they acknowledge the liability to pay) and issuance of cheques took place within a period of three years from the date of default which further extended the period of limitation.

Therefore, it can be said that the present application is within limitation.

14. The existing default amount is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present Application.

15. In our view the application is complete in terms of Section 9 of the Code. The Applicant has proved that there is debt and default has occurred. We have also seen that the amount defaulted is more than Rs. 1.00 Cr. which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent deserves to be admitted.

16. Further, the Applicant/Operational Creditor has proposed the name of the Interim Resolution Professional (**'IRP'**) Mr. Arpan Maheshkumar Shah having Registration No. IBBI/IPA-001/IP-P-

01847/2019 -2020/12862. He has also filed his written communication annexed with the Application as Annexure-B as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by him as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the Code.

17. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under:-

- (i) The **Respondent/Corporate Debtor - Oasis Marine Pvt. Ltd.** is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- 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 Securitisation and Reconstruction of Financial 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.
- e. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with

any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.

- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) As proposed by the Applicant/Operational Creditor, we hereby appoint **Mr. Arpan Maheshkumar Shah** having Registration No. IBBI/IPA-001/IP-P-01847/2019-2020/12862 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (IRP). She shall conduct the Corporate Insolvency Process

as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this

Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/-** (Rupees Two Lakh Only) in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary

formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

- (xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

18. Accordingly, this Application **CP(IB)/223/AHM/2021** is allowed and stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

Sandeep-LRA