

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

30

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 17.09.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No. 105/9/HDB/2019
NAME OF THE COMPANY	Parameswara Poultry Farm Pvt Ltd
NAME OF THE PETITIONER(S)	Shiva Parvathi Poultry Feed Pvt Ltd
NAME OF THE RESPONDENT(S)	Parameswara Poultry Farm Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Mangy Kumar Mishra Sawani Deshpande	Advocate Adv.	9440234079 9966475751	In front DVA SRAI PAVANI Sawani Deshpande

Counsel for Respondent(s):

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

ORDER

Orders passed vide separate orders.

Petition is admitted.


Member (J)

Pavani

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

CP (IB) 105/9/HDB/2019

U/s 9 of IBC, 2016

In the matter of:

Shiva Parvati Poultry Feed Private Limited

.Shiva House, Near State Bank of India

New Mondha

Nanded – 431602, Maharashtra

... Petitioner/
Operational Creditor

VERSUS

Sri Parameswara Poultry Farm Private Limited

18-190/1, Opp Saibaba Temple

Shad Nagar, Farooq Nagar

Mahaboob Nagar, Telangana – 509216

... Respondent/
Corporate Debtor

Date of order: 17.09.2019

Coram:-

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Appearances:

For the Petitioner: Shri Manoj Kumar Mishra, Advocate

For the Respondent: Shri C.V. Srinath along with Shri R.
Srinivasa Rao and Shri G. Bhupesh,
Advocates

Heard on: 20.02.2019, 20.03.2019, 16.04.2019, 08.05.2019,
10.06.2019, 05.07.2019, 19.07.2019

**PER: SHRI RATAKONDA MURALI
MEMBER (JUDICIAL)**

BRIEF OF THE CASE

1. Shiva Parvati Poultry Feed Private Limited is the Operational Creditor who filed this Petition under Section 9 of Insolvency & Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, stating that Sri Parameswara Poultry Farm Private Limited/ Corporate Debtor herein defaulted in repaying an amount of Rs. 4,44,67,975/-. Hence, seeking admission of Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

AVERMENTS

2. The facts apropos to the case in brief are:-
 - (1) The Operational Creditor is in the business of supplying poultry feed and its registered office is situated at Shiva House, Near State Bank of India, New Mondha, Nanded – 431 602, Maharashtra and the factory is at Hingoli, Maharashtra.
 - (2) The Corporate Debtor is also in the business of poultry feed and its registered office is at 18-190/1, Opp: Sai Baba Temple, Shad Nagar, Farooq Nagar, Mahaboob Nagar, Telangana.
 - (3) The Operational Creditor supplied poultry feed to Corporate Debtor from January 2015 and invoices was raised with normal credit term as 90 days and that materials mentioned on the invoices were usually accepted by Corporate Debtor. It is stated that the Corporate Debtor never raised any dispute with regard to quantity, quality of the material supplied by the Operational Creditor and defaulted in making payments since April 2017. Despite issuing reminders to the Corporate Debtor for clearing

the dues, the Corporate Debtor did not heed to its requests.

- (4) It is the case of Operational Creditor that the Corporate Debtor had given 07 cheques totalling to Rs. 3,51,37,136/- to it towards settlement of the dues. Out of the 07 cheques, 04 cheques were returned due to insufficient balance and the other three were returned for the reason that Corporate Debtor instructed the bankers for stopping payment.
- (5) When Corporate Debtor failed to make payment, the Operational Creditor issued legal notice dated 21.08.2018 but no reply was received by Operational Creditor.
- (6) Demand Notice in Form-3 was served upon the Corporate Debtor. However, Corporate Debtor never raised any dispute for the amount mentioned in Form-3.
- (7) The Operational Creditor raised invoices which stipulated an interest of 24% per annum for delayed payment. The default is with effect from 02.04.2017. Hence, this petition.

COUNTER

3. Counter is filed by Corporate Debtor. The objections raised in the reply in brief are:-
 - (1) The main objection raised by the Corporate Debtor is that the claim is barred by limitation.
 - (2) The Corporate Debtor denies that there is any amount due to Operational Creditor.
 - (3) The Operational Creditor has suppressed the fact that it has obtained several blank signed cheques and letter heads of Corporate Debtor and that the Operational Creditor has not approached this Tribunal with clean hands.



- (4) Corporate Debtor contended that numerous blank cheques were given as security and out of those, Operational Creditor misused 7 cheques and presented them by filling up imaginary figures.
- (5) The Corporate Debtor further disputed the amount claimed by the Operational Creditor. The Corporate Debtor stated that it made payment of Rs. 4,75,55,000/- from March 2017 to January 2019 to the Operational Creditor.
- (6) Further Corporate Debtor averred that it made payments of Rs. 20,00,000/- on 07.01.2019 and Rs. 13,00,000/- on 17.01.2019. It is the case of Corporate Debtor that Operational Creditor approached this Tribunal with malafide intentions and misused the blank signed cheques and letter heads claiming that Corporate Debtor has admitted the liability. Hence, prayed this Tribunal to dismiss the petition.

DISCUSSION:

4. I heard the Counsel for Operational Creditor as well as Counsel for Corporate Debtor. This Petition is filed under Section 9 of IBC by Shiva Parvati Poultry Feed Private Limited stating that Sri Parameswara Poultry Farm Pvt Ltd /Corporate Debtor committed default of payment of Rs. 4,44,67,975/- including interest. The case of Operational Creditor is that it supplied Soya Poultry Feed Products and raised total 22 invoices cum bill of supply for Shadnagar Location and another 32 invoices cum bill of supply for Burgula Shadnagar location which are outstanding. Details of invoice and calculation of interest up to 30.09.2018 in respect of Shadnagar and Burguda Branch of Corporate Debtor is shown as Annexure-4 at page Nos. 18 -19.

5. Further it is the case of Operational Creditor that the Corporate Debtor has confirmed the balance as on 15.05.2018 which is annexed and marked as Annedure-5 at page Nos. 20 to 24. The Operational Creditor filed copy of Invoices raised for Corporate Debtor's Shadnagar Branch which is marked as Annexure-9 at page Nos. 40-62 and for Corporate Debtor's Burgula Branch annexed as Annexure 10 page Nos. 63-159. The goods are delivered to Corporate Debtor Company. The Learned Counsel for Operational Creditor would contend that though 07 cheques were issued to it amounting to Rs.3,51,37,136/-, 04 cheques were returned with endorsement "insufficient balance" and the other three cheques were returned to Operational Creditor citing reason that Bankers received instructions from the Corporate Debtor to stop payment. Copies of cheques bounced / stopped with remarks of the Bank are filed as Anneuxre-11 at page Nos. 160-166. When Corporate Debtor failed to make payment, it issued Demand Notice in Form 3 on 17.10.2018 but no reply received from Corporate Debtor to the demand Notice and no dispute raised. The Learned Counsel for Operational Creditor would further contend that a legal notice dated 21.08.2018 was subsequently issued by Advocate to Corporate Debtor but no reply was received even for that legal notice by the Operational Creditor. While the case was pending on the file of this Tribunal, the Corporate Debtor issued five post-dated cheques amounting to Rs. 2.50 crores but all the five cheques got dishonoured as intimated by Learned Counsel for Operational Creditor vide memo dated 04.07.2019.
6. On the other hand, the objection raised by the Learned Counsel for Corporate Debtor is that there is no such liability. Further it is alleged that Operational Creditor suppressed the facts and approached the Tribunal with unclean hands. The Learned Counsel

for Corporate Debtor would contend that Operational Creditor is in possession of several blank signed cheques and letter heads of Corporate Debtor Company and denies having issued seven post-dated cheques to the Operational Creditor. It is the contention of the Learned Counsel for Corporate Debtor that the Operational Debtor misused 7 cheques by manipulating the figures and presented them to the Bankers. It is further its case that it already made payment to the tune of Rs. 4,75,55,000/- from March 2017 to January 2017 and further disputed the claim amount mentioned in the Petition.

7. Admittedly, supply of Soya Poultry Feed Products by Operational Creditor is not in dispute. The Operational Creditor filed invoices and material receipt challans which show that goods were received by the Corporate Debtor and cheques issued by Corporate Debtor for the above invoices were dishonoured by the Bank with remarks "insufficient funds". The Learned Counsel for Operational Creditor also filed memo dated 08.05.2019 enclosing copy of the Board Resolution dated 30.04.2019 of Corporate Debtor Company which resolved to settled the entire dues of Operational Creditor and expressed its willingness to pay a sum of Rs.5,06,66,688/- including interest and issued post-dated cheques amounting to Rs.4,05,00,000/-. However, it failed to stick to its commitments. The Corporate Debtor has not filed any document or scrap of paper to show that it paid the outstanding amount except orally contending the same. I have seen the Board Resolution dated 30.04.2019 of the Corporate Debtor which clearly shows that Corporate Debtor accepted the liability to the extent of the demand raised in the Petition by the Operational Creditor and agreed to pay the same. As such the Operational Creditor is able to establish debt which Corporate Debtor committed default



8. The Operational Creditor filed documentary evidences to establish supply of goods to Corporate Debtor and further default. Therefore, there are grounds to admit the Petition. No tenable objections are raised by the Corporate Debtor. The Operational Creditor suggested the name of the IRP and filed his consent in Form-2. The petition is complete and therefore deserves to be admitted.


ORDER

9. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-
- (i) 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;
 - (ii) 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.

- (iii) 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.
- (iv) That the order of moratorium shall have effect from 17.09.2019 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.
- (v) 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.
- (vi) That this Bench hereby appoints Shri Satish Kumar Jain, C2/401, Prestine Royal, Behind Spicer College, Aundh, Pune – 411007 (IBBI Registration No. IBBI/IPA-001/IPP00254/2017-2018/10483 as Interim Resolution Professional to` carry the functions as mentioned under the Insolvency & Bankruptcy Code.

Accordingly, this Petition is admitted.


RATAKONDA MURALI
MEMBER (JUDICIAL)

17.9.19,