

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

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 14.03.2022 AT 10.30 AM**

| TC/CP. Nos. | CA/IA No. | Section/ Rule | Name of Parties |
|-------------------------|----------------|------------------|---|
| CP(IB) No.52/9/AMR/2021 | IA(IBC)/1/2021 | 9 of IBC | Gayatri Sea Foods and Feeds pvt Ltd Vs Apex Aqua Agencies Pvt Ltd |

Counsel for Petitioner(s):

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

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

At request of counsel for the Operational Creditor for filing rejoinder, list the matter on 30.03.2022.

IA(IBC) /1/2021:

Heard both the counsel. IA is allowed, vide separate orders.

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**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

**I.A.No.1 of 2021
IN
CP (IB) No.52/9/AMR/2021**

**Under Section 60(5) of Insolvency and Bankruptcy Code, 2016
Read with Rules 49(2) & 11 of the National Company Law
Tribunal Rules, 2016**

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

BETWEEN:

M/s. Apex Aqua Agencies Private Limited,
Door No.40-5/3-1B, A2, Block No.A, Land Mark Pride,
Patamata, Vijayawada -520011,
Represented by its Suspended Director
Mr.Vatsavi Venkata Subramanyam Varma, S/o. Krishnam Raju,
R/o. #259, Near Venkateswara Temple,
New Santosh Nagar Colony, Saidabad,
Hyderabad – 500059

.... Applicant/ Corporate Debtor

AND

1. 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.1/Operational Creditor

7/10/21

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

... Respondent No.2/Interim Resolution Professional

Orders pronounced on: 14.03.2022

Coram:

Justice Telaprolu Rajani, Member Judicial.

Parties/Counsels present:

For the Applicant : Mr.Ch.Srinivasulu, Advocate
For the Respondent No.1 : Mr.A.Chandra Shaker, Advocate

ORDER

1. This application is filed by the Suspended Director Mr.Vatsavi Venkata Subramanyam Varma of Corporate Debtor M/s. M/s. Apex Aqua Agencies Private Limited Under Section 60(5) of Insolvency and Bankruptcy Code, 2016 Read with Rules 49(2) & 11 of the National Company Law Tribunal Rules, 2016, seeking to set aside the ex-parte order dated 25.11.2021 passed in CP No.52/9/AMR/2021. The grounds on which the impugned order as sought to be set aside is based on the following facts:

- i. It is learnt from the NCLT website that an ex-parte order was passed on 25.11.2021. The Operational Creditor has misled

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the Tribunal. If the Applicant had received the demand notice he would have replied suitably stating that the Applicant has to pay only Rs.18,68,579/- as against the claim made in the main Petition for Rs.5,74,09,966/-.

- ii. The Applicant/Corporate Debtor has shifted the Registered Office of the Company from Visakhapatnam to Vijayawada by following due process of law. He also filed requisite Form INC 22 with the Registrar of Companies (RoC), Ministry of Corporate Affairs, Vijayawada. The Resolution Professional might have sent the demand notice to the registered office of the Corporate Debtor of Company earlier situated at Visakhapatnam. As such, the same is not received by the Applicant and could not be replied.
- iii. As per the order the Operational Creditor represented by RP has issued demand notice dated 16.07.2021, which was not served on the management of the Corporate Debtor Company. During that the management of the Company vacated the Registered Office at Visakhapatnam and shifted to Vijayawada. Hence, since there is no notice, the Applicant could not appear and contest the case. The ex-parte order is to be set aside, since there is good defence for the Corporate Debtor.

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2. The counter filed by the Respondent No.1 states that the Applicant is vexatious. It is stated that Annexure –A established that the demand notice under Section 8 of IBC dated 16.07.2021 was sent to the Corporate Debtor by way of Registered Post with Acknowledgment Due and the postal receipt is also filed as Annexure –B. The same was served to the Applicant/Corporate Debtor on 20.07.2021 and the postal track report is filed as Annexure –C, it shows that it was delivered on 20.07.2021. Hence the allegations that the notice was not received is false. Even according to the Applicant, the Office was shifted on 03.08.2021 while the notice was served on 20.07.2021. Hence the Application is liable to be dismissed.

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.

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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.


JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu