

**HYDERABAD BENCH
COURT HALL NO: II****PHYSICAL HEARING**

**CORAM: JUSTICE TELAPROLU RAJANI – HON’BLE MEMBER (J)
CORAM: SHRI CHARAN SINGH - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 06.02.2023 AT 02:30 PM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/984/2022 in CP (IB)No.516/9/HDB/2019
NAME OF THE COMPANY	Nexus Well-Hope Agri Tech International Ltd
NAME OF THE PETITIONER(S)	Gauri Agrotech Products Pvt Ltd
NAME OF THE RESPONDENT(S)	Nexus Well-Hope Agri Tech International Ltd
UNDER SECTION	9 of IBC

ORDER**IA(IBC)984/2022**

Application is dismissed, vide separate orders.

**Sd/-
MEMBER (T)**

**Sd/-
MEMBER (J)**

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH - II

IA No.984/2022 in CP(IB) No. 516/9/HDB/2019
U/s. 60(5) of IB Code, 2016

In the matter of:

M/s. Nexus Well-Hope Agritech International Ltd,
Door No.8-1-301/86 & 87, Plot No.101,
Shaikpet Nala, Sai Priya Residency,
Lakshmi Nagar Colony,
Hyderabad – 500 008.

.... Petitioner/CD

Vs

1. M/s. Gauri Agrotech Products Private Limited,
Gut No.79 & 91, Gundewadi,
Bhokardan Road, Jalna,
Maharashtra – 431 203.

....Respondent/OC

2. Mr. Maheswara Rao Gokada,
Interim Resolution Professional,
Door No.4-119/2/G2,
Laxmi Subhiksha Apartment,
Page Junior College Road, Central Bank,
Kompally, Medchal District.

....Respondent/IRP

Date of order: 06.02.2023

CORAM:

Justice Telaprolu Rajani, Member (Judicial)
Shri Charan Singh, Member (Technical)

Counsels present:

For the Petitioner : Mr. Ch. Srinivasulu, Advocate

For the Respondent : Mr. Thomas George, Advocate

Heard on : 02.02.2023

[PER: BENCH]
ORDER

1. This application is filed, seeking to set aside the *ex-parte* order dated 09.09.2022.
2. The grounds on which, the order is sought to be set aside are as follows:
 - 2.1 It is learnt from the email dated 16.09.2022 of the IRP that the Tribunal passed an *Ex-parte* Order. It was to the surprise of the Corporate Debtor (CD) that the Operational Creditor (OC) completely misrepresented the matter before the Tribunal. The OC filed the Petition with a malafide intention, suppressing the fact that there is a Civil Suit pending before the Hon'ble Senior Civil Judge Court at Bhimavaram. There is a pre-existing dispute between the parties with regard to the quality and quantity of products supplied to the Corporate Debtor and there was a counter claim by each other. The OC is contesting the case by engaging a Counsel in the Civil Court. There is no Demand Notice or Reminder issued by the OC as alleged. The OC does not have locus standi to file this case while the case is pending before the Civil Court. If the CD had received the Demand Notice, the CD would have engaged some Advocate to contest the matter. It is due to the Covid effect that most of the staff are not attending the Registered Office of the Company. Notice sent by the OC is received by the CD and not answered and attended, only due to the staff members not attending the office, which is neither intentional nor wanton.

- 2.2 In similar circumstances, the NCLT, Kolkatta Bench in CA(IB) No.987/KB/2018 in CP(IB) No.202/KB/2018 has set aside the Orders of *Ex-parte*. The NCLT, Amaravati Bench also in a similar matter in CP.No.52/9/AMR/2021 has set aside the *Ex-parte* order.
- 2.3 On the above grounds, the Applicant seeks to set aside the *Ex-parte* Order passed against him.
3. The Respondents filed Counter contending that the Application is frivolous. The Respondent is attempting to raise a dispute which does not exist. The contention that the Demand Notice is not issued is blatantly false and it is a matter of record that the said Notice was duly received by the Applicant and a reply was also received on 17.05.2019. The Tribunal, vide the Order dated 20.01.2020, suo-moto reopened the matter for clarification regarding the reply issued by the Applicant to the said Notice and the Respondent also filed an Additional Affidavit on the said point and the Tribunal also recorded that "*baseless charges about the quality and quantity of the goods that had been supplied by the Applicant. Such complaint has never been raised previously and hold no water under the Code, 2016*".
4. The Notice dated 27.04.2019 was duly served and delivered to the Applicant on 01.05.2019. A reply Notice was also issued and the same was considered by the Tribunal while passing the Order dated 09.09.2022. Notices were taken to the Respondent vide email dated 26.09.2019, intimating about the hearing before the Tribunal. Subsequently, substituted service by way of paper

publications was also carried out. The Court Notices were also served on the same address on which the Demand Notice was issued and delivered to the Applicant. The orders were passed after giving adequate opportunity to the Applicant.

5. The facts dealt with by the Kolkatta Bench and the Amaravati Bench are totally different. Hence, the application is liable to be dismissed.

6. Heard both the Counsel. A perusal of the Order passed by this Bench would show that the reply Notice which was issued by the Applicant was discussed. It is observed that baseless charges about the quality and the quantity of the goods which was not previously raised was raised, hence it does not hold water under the Code, 2016. The contention that the Applicant did not receive the mails is not at all tenable, since he admittedly received the email intimating about the admission of Petition filed by the OC. It is to the same email address that the mails are being sent by the OC. Several opportunities were given for the appearance of the Applicant. As contended paper publication was also made, but the Applicant did not choose to appear. The Notices were being returned on the ground of the door being locked, which also does not appear to be true. It is not the case of the Applicant that he is not residing in the said address. It is strange that all the Notices were returned on the same ground. It is incomprehensible that the door would always be locked. No cogent answer comes for the said doubt raised by us. We do not find the reasons put forth as genuine.

7. Hence, in view of the above, we are not inclined to allow this application and this application is dismissed.
8. With the above directions **IA.No.984/2022 in CP(IB) No. 516/9/HDB/2019 is dismissed.**

Sd/-

**(CHARAN SINGH)
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE TELAPROLU RAJANI)
MEMBER (JUDICIAL)**

VL