

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

ITEM No.301- C.P.(IB)/203(AHM)2023

Order under Section 9 of IBC, 2016

IN THE MATTER OF:

Skretting Aquaculture India Pvt. Ltd.

.....Applicant

Vs.

Nagraj Aqua LLP

....Respondents

Order delivered on:14/06/2024

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 open Court, vide separate sheet.

-SD-

SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH -I, AHMEDABAD**

C.P.(IB)/203(AHM)2023

(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of

Skretting Aquaculture India Private Limited

Having its registered office situated at:
133-C, 13th Floor, Mittal Tower, 210
BR Rajani Patel Marg, Nariman Point,
Mumbai-400021.

Also having its office at:

SLN Terminus, L4 04, Survey No 133,
Gacchibowli, Hyderabad-50032.

... Applicant/Operational Creditor

VERSUS

Nagraj Aqua LLP

Having its address at:
01, Sarthi Kutir Row House,
Behind Nehar Coloney, Dungri,
Valsad, Gujarat-396375.

Also at:

At & Post Kardiva Faliya, Malvan,
Dungri Coastal Highway
Valsad, Gujarat-396385.

... Respondent/Corporate Debtor

Order Pronounced on 14.06.2024

CORAM :

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For Operational Creditor : Mr. Sumitra Chaturvedi, Adv

For Corporate Debtor : Ex-parte.

O R D E R
(PER: BENCH)

1. The present application is filed on 07.06.2023 by the Applicant M/s. Skretting Aquaculture India Private Limited ("**Operational Creditor**") against the Respondent M/s Nagraj Aqua LLP (hereinafter referred to as '**Corporate Debtor**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "**IB (AAA) Rules, 2016**") for initiation of Corporate Insolvency Resolution Process (**CIRP**), to appoint Interim Resolution Professional (hereinafter referred to as "**IRP**") and declare the moratorium for having defaulted in payment of the operational debt.

2. A perusal of Part-I of the Form-5 reveals that Operational Creditor is one M/s. Skretting Aquaculture India Private Limited. The Corporate Identification Number of the Operational Creditor is U05004MH2018PTC308197, having its address at 133-C, 13th Floor, Mittal Tower, 210 BR Rajani Patel Marg, Nariman Point, Mumbai-400021. Further, this application is filed through one Mr. Sanjeev Tripathi who has been authorised by Board Resolution dated 10.05.2023 which is annexed at Annexure-B.
3. On perusal of Part-II of the Form-5 reveals that the Corporate Debtor is one M/s. Nagrag Aqua LLP, having CIN as LLPIN: AAL-4292. The registered address of the Corporate Debtor is 01, Sarthi Kutir Row House, Behind Nehar Coloney, Dungri, Valsad, Gujarat-396375.
4. On perusal of Part-III of the Form-5 reveals that the Operational Creditor has proposed the name of Mr. Dilip Gupta, Reg. No. IBBI/IPA-002/IP-N00765/2019-2020/12484, email Id: ipdilipgupta@gmail.com under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**).

5. On perusal of Part-IV of the Form-5 reveals that total operational debt as claimed by the Operational Creditor is Rs.1,13,79,674/-as on 07.07.2023. The date of default is stated to be 08.12.2022.
6. It is stated that the Operational Creditor is engaged in the business of manufacturing, marketing and selling of innovative feeds and nutritional services for the aquaculture industry since past several years.
7. The Corporate Debtor approached the Operational Creditor for supplying various types of aqua feeds produces (“**goods**”) as per its requirements and the placed orders on various dates upon the Operational Creditor for supplying of the said goods. Pursuant to the order placed by the Corporate Debtor, the Operational supplied the goods to the Corporate Debtor and raised the various invoices from time to time.
8. It is stated that the Corporate Debtor without any demur or complaint received the said goods. Pursuant to the supply of goods, the Operational Creditor raised total 21 invoices w.e.f. 14.09.2022 to 04.01.2023. However, the Corporate

Debtor failed and neglected to make payment of the outstanding debt. The details of 21 invoices are as under:-

S. No.	Invoice No.	Date	Amount (Rs.)
1	690202200 777	14.9.2022	7,99,943
2	690202200 793	19.9.2022	5,56,529
3	690202200 798	20.9.2022	7,01,351
4	690202200 817	23.9.2022	6,95,119
5	690202200 836	27.9.2022	6,46,608
6	690202200 850	28.9.2022	6,95,119
7	690202200 868	4.10.2022	6,98,027
8	690202200 884	6.10.2022	25,896

9	690202200 882	6.10.2022	7,01,351
10	690202200 949	18.10.2022	6,95,119
11	690202200 948	18.10.2022	25,896
12	690202201 021	2.11.2022	6,78,903
13	690202201 047	11.11.2022	6,78,903
14	690202201 068	14.11.2022	6,474
15	690202201 067	14.11.2022	6,78,903
16	690202201 081	18.11.2022	6,62,297
17	690202201 160	1.12.2022	7,66,809
18	690202201 177	6.12.2022	7,15,760
19	690202201 183	8.12.2022	4,568
20	690202201 224	17.12.2022	5,79,331
21	690202300 005	4.1.2023	6,78,903

9. It is stated that the Operational Creditor time and again requested the Corporate Debtor to make payment of outstanding amounts. The Corporate Debtor never denied the claims of the Operational Creditor. The Corporate Debtor vide its letter dated 11.02.2023 confirmed the outstanding amount is payable by the Corporate Debtor to the Operational Creditor. A copy of letter dated 11.02.2023 is attached as Annexure-G at page no. 50 of this application.
10. It is stated that despite admitting the dues, the Corporate Debtor failed and neglected to make the payment. Thus, as on 31.03.2023, a total outstanding amount of Rs.1,14,79,674/- was due payable by the Corporate Debtor to the Operational Creditor.
11. It is stated that since the Corporate Debtor did not make the payment of outstanding debt, the Operational Creditor issued a Demand Notice in Form 3 on 29.04.2023 calling upon the Corporate Debtor to pay the outstanding debt of Rs.1,14,79,674/-. The said Demand Notice was duly served upon the Corporate Debtor on 04.05.2023. A copy of

Demand Notice dated 29.04.2023 along with delivery report is annexed as Annexure-H at page nos. 51 to 87.

12. It is stated that despite the receipt of the Demand Notice, the Corporate Debtor has neither replied to the Demand Notice nor paid the entire amount of debt. However, recently on 07.07.2023, the Corporate Debtor has made a payment of Rs.1,00,000/- which establishes the acknowledgement of debt payable by the Corporate Debtor to the Operational Creditor. After adjusting Rs.1,00,000/- paid on 07.07.2023, the total outstanding amount is Rs.1,13,79,674/-. The date of default is stated to be 08.12.2022.

13. The Operational Creditor has relied upon the following documents:-

1. *Copy of all 21 invoices raised by Operational Creditor on Corporate Debtor from time to time at **Annexure-F Colly;***
2. *Copy of letter dated 11.02.2023 addressed by Corporate Debtor to Operational Creditor conforming outstanding amount payable by Corporate Debtor to Operational Creditor at **Annexure-G.***

3. *Copy of Demand Notice dated 29.04.2023 issued by the Operational Creditor to Corporate Debtor under the provisions of IB Code along with postal receipts and acknowledgement at **Annexure-H Colly**;*
4. *Copy of Ledger account of the Corporate Debtor in the books of account of the Operational Creditor for the period from 1.4.2022 to 31.3.2023 and from 1.4.2023 to 15.7.2023 at **Annexure-I Colly**.*

14. In compliance, of the order dated 28.02.2024, the Operational Creditor filed an additional affidavit under inward diary no. D3752 dated 02.05.2024 placing on record a notification no.2/2017-Central Tax (Rate) dated 28.06.2017 issued by the Ministry of Finance, Government of India to show that all kinds of aquatic feed is exempted from the whole of Central Tax leviable thereon under Section 9 of the Central Good and Services Tax Act, 2017 and a Statement Report for the period between 14th March 2022 to 30th April 2022 of the account of the Applicant Company maintained with ANZ Bank to show that there were regular banking transactions between the Petitioner

and the Respondent including other entities indulged in the business of buying and selling aqua feeds.

15. In compliance of the order of this Tribunal dated 03.05.2024, an additional affidavit vide inward diary no. D4388 dated 04.06.2024 is filed by the Operational Creditor to show that as per the Balance Sheet of the Corporate Debtor as on 31.03.2023, the Corporate Debtor owes an amount of Rs.1,08,00,277.31 to Skretting West Coast Pvt. Ltd., which is the erstwhile name of the Operational Creditor. Certificate of Incorporation pursuant to change of name dated 12.05.202 issued by RoC, Mumbai is annexed as Annexure-3 to this affidavit. It is further stated that as per the Trade Receivables as on 31.03.2023, an amount of Rs.1,14,79,674/- was due and payable by the Corporate Debtor to the Operational Creditor and Bank Statement of the Operational Creditor maintained with HSBC evidences payment of Rs.1 Lakh by the Corporate Debtor to the Operational Creditor on 07.06.2023.

16. The Applicant has also filed the written submission vide inward diary no. D1600 dated 23.05.2024. We have considered the same.
17. We have heard the counsel and have perused the material on records. It is seen that the Operational Creditor supplied the goods to the Corporate Debtor from time to time and raised 21 invoices. The Corporate Debtor vide its letter dated 11.02.2023 had confirmed that as on 10.02.2023 an amount of Rs.1,27,48,620.65ps. is outstanding towards Operational Creditor. Since, the Corporate Debtor failed and neglected to pay the outstanding amount, a Demand Notice dated 29.04.2023 was sent by the Operational Creditor to the Corporate Debtor for demanding an outstanding amount of Rs.1,14,79,674/- as on 08.12.2022. The said Demand Notice was duly delivered through registered post on 04.05.2023. The Corporate Debtor neither replied to the said Demand Notice nor raised any pre-existing dispute.
18. Further, as per the report of the NeSL in Form D, the default of amount and date of default is Rs.1,14,79,674/-

and 08.12.2022 respectively and the Status of Authentication of Default is mentioned as “Deemed to be Authenticated”.

19. It is seen that after giving several opportunities, no one appeared for the Corporate Debtor nor any reply was filed. Accordingly, this Adjudicating Authority vide its order dated 18.12.2023 proceed as ex-parte. Order dated 18.12.2023 records as under:-

“Now the registry has place on record the proof of dispatch of the notice as well as delivery on the file which reflects that notice was dispatched by the registry to the respondent on 26.10.2023, which was delivered as per tracking report of the postal authority on 30.10.2023, intimating the next date of hearing before the Tribunal being 20.11.2023. However, despite due service neither the respondent appeared on the last effective date of hearing not today. As today neither anyone has come present to represent the respondent nor any reply has been received in this matter.

In view of the above, the respondent is proceeded as ex-parte. Meanwhile, the applicant is directed to file two pages synopsis.”

20. Perusal of Bank Statement maintained with HSBC, annexed as Annexure-A5 of affidavit dated 01.04.2024 reveals that Corporate Debtor on 07.07.2023 had paid a sum of Rs.1,00,000/- which itself is an acknowledgement of debt.

21. In view of the above, it is seen that this application is filed on 07.08.2023 and the date of default is stated to be 08.12.2022 for a sum of Rs.1,13,79,674/-. The outstanding Operational Debt 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. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

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

- (i) The Respondent/Corporate Debtor **M/s. Nagraj Aqua LLP** 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 Operational Creditor, we appoint **Mr. Dilip Gupta, having Reg. No. IBBI/IPA-002/IP-N00765/2019-2020/12484 (Email ID: ipdilipgupta@gmail.com)** under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**). He 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 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate with the IRP 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 etc. 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.

23. Accordingly, **CP(IB)/203(AHM)2023** is allowed. 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)**

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