

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

**PRESENT: JUSTICE TELAPROLU RAJANI – MEMBER JUDICIAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 26.10.2022 AT 10.30 AM**

TC/CP. Nos.	CA/IA No.	Section/ Rule	Name of Parties
CP(IB) No. 77/9/AMR/2021		9 of IBC	Pattabhi Enterprises Vs. Blue Park Seafoods Private Limited

Counsel for Petitioner(s):

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

Counsel for Respondent(s):

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

ORDER

CP(IB) No. 77/9/AMR/2021 is admitted, vide separate orders.

SD/-
**JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH AT MANGALAGIRI**

*** **

CP (IB) No. 77/9/AMR/2021

**In the matter of a Petition 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
AND**

**In the matter of
M/s. BLUE PARK SEAFOODS PRIVATE LIMITED**

Between:

Pattabi Enterprises,
70-71, Hootagally Industrial Area,
Hootagally, Mysore,
Karnataka - 570018.

... Operational Creditor

AND

M/s. Blue Park Seafoods Private Limited,
5-85, Kurumaddali, Pamarru Mandal,
Pamarru, Krishna District,
Andhra Pradesh - 521157.

... Corporate Debtor

Date of pronouncement of order: 26.10.2022

CORAM:

Justice Telaprolu Rajani, Member Judicial.

Appearance:

For Operational Creditor : Mr.Anirudh Suresh, Advocate.

For Corporate Debtor : Ms.Jami Madhavi & Mr.Balu Anil
Kumar Palla, Advocates.

ORDER

1. This Company Petition is filed by Pattabi Enterprises, Operational Creditor (hereinafter referred to as OC) against the M/s. Blue Park Seafoods Private Limited, Corporate Debtor (hereinafter referred to as CD) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD) for the default committed by the CD in discharging the debt that is due to the OC.
2. The facts of the case briefly are as follows:
 - i). The CD is engaged in the business of manufacturing and exporting of high quality, affordable seafood products. In order to export the seafood products, it availed the services of the OC for package of the materials, since, the OC is engaged in the business of printing boxes, lamination boxes, packaging materials etc. The commercial understanding between the parties was as per the quotation provided by the OC, after which the goods were supplied and invoices were raised. Every invoice raised till date was accepted by the CD without any dispute or demur.
 - ii). The OC credited GST in the account of the CD in a timely manner as and when the invoices were raised. The CD made numerous payments. However, the outstanding balance remained. The CD, in order to clear the outstanding amount,

issued five cheques dated 23.01.2021, amounting to Rs.1,08,00,000/- but all the cheques were dishonoured. Several requests were made for the discharge of the amount, but in vain.

iii). The OC levied interest @ 9% p.a. Since, the CD failed to discharge the amount, a demand notice was issued. But no reply was given by the CD. Hence this Company Petition, seeking to initiate CIRP against the CD.

3. The CD filed counter, contending that all the claims made by the OC are false. It is contended that the CD has not placed all the purchase orders for supply of material. The OC is claiming huge amounts without supply of goods and is put to strict proof. It is further stated that the OC has supplied goods by using poor quality of the paper. It is also contended that there is pre-existing dispute with regard to quantity and quality of the goods. The items which are delivered to the CD are not useful for export purpose. The CD, with good intention, several times sent the goods to the foreign countries. But in the entrance of the goods to the International Market, either they were sent back or they were not allowed to shipment. As such the time of the CD is wasted and the CD sustained huge losses. The CD several times informed the OC to lift the goods and vacate the premises, which became a herculean task for the CD. The OC sent fictitious invoices without paying GST to the Government or wrongly claiming GST without supplying the goods or supplying poor quality goods. The CD replied to the OC on the issuance of the

demand notice, intimating that there is pre-existing dispute with regard to the quality and quantity. When there is a pre-existing dispute, the application is not maintainable. The OC not only filed the present case but also filed a cheque bounce case under Section 138 of the NI Act in the Lower Court, Mysore. The signature of one Mohan Rao is fabricated on the cheques, who is not a Director of the CD. The matter is sub-judice and amounts to pre-existing dispute. Hence, the application is liable to be dismissed.

4. The OC filed Rejoinder stating that the CD is misleading the Tribunal by claiming that there is a pre-existing dispute. The CD accepted their liability along with interest and issued cheques for the total due amount. The contention that the goods are poor quality is false, as the copy of the outstanding invoice along with E-way bill, lorry receipt would show the supply of goods and the copy of GSTR shows that the OC has paid the GST amount. Section 138 NI Act proceedings are not a subject matter of this Petition. The OC is entitled for interest. Hence, the claim is liable to be admitted.
5. Heard the arguments and perused the written submissions filed by both the sides. At the time of hearing, the Counsel for the CD restricts his arguments only to the pecuniary jurisdiction of this Tribunal, contending that the principal amount is only Rs.96,44,620/- and hence, this application is not maintainable since, the threshold limit is less than Rs.1 Crore. In the written arguments, it is contended, without clarity, that according to Section 4 of IBC

the minimum amount of default is Rs.1 Lakh, which can be increased up to Rs.1 Crore by way of notification by the Ministry of Corporate Affairs (MCA). In answer to the written submissions of the OC with regard to the NCLAT order passed in July, 2022 in *Prashat Agarwal Vs. Vikash Parasrampuria and Others*, it is contended that the general principle is that the judicial decisions do not have retrospective affect and the nature of law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law. A rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention to the contrary. The entire arguments are based on the retrospective application of the notification raising the threshold limit to Rs.1 Crore and the pre-existing dispute which is the pendency of the 138 NI Act Case. There is no argument that interest is not liable to be paid by the CD. Hence, when interest and the principal amount together are above the threshold limit, the Tribunal has pecuniary jurisdiction to entertain the application. In this case the total amount of principal and interest is Rs.1,18,44,386/-. The date of notification issued by the Ministry of Corporate Affairs raising the threshold limit is dated 24.03.2020. The date of filing of this application is 06.12.2021, which is after the notification. Hence, the question of retrospectively applying the notification does not arise in this case.

6. The judgments relied upon by the Counsel for the CD themselves would stand as an answer to the contention of the OC. The case

rendered by the Hon'ble Supreme Court between *M/s. S.S. Engineers Vs. Hindustan Petroleum Corporation Limited & Others in Civil Appeal No.4583 of 2022*, pertains to the existence of a dispute, which completely is based on the facts of the case dealt with by the Supreme Court. The 2nd judgment relied upon is rendered by the NCLAT, Principal Bench New Delhi in *Company Appeal (AT) (Ins) No.813 of 2021 between Jumbo Paper Products Vs. Hansraj Agrofresh Private Limited*, wherein it was held that there was no debt and default as on 24.03.2020. It was held that the debt predates the issue of notification on 24.03.2020, which is not the case herein. The same judgment held that the notification dated 24.03.2020 makes it unambiguously clear that the threshold limit to be considered for Section 9 Application will be Rs.1 Crore. The threshold limit will be applicable for an application filed under Section 7 or 9 on or after 24.03.2020 even if debt is of a date earlier than 24.03.2020. This case clearly falls within the above observation made by the NCLAT. Though the debt is prior to 24.03.2020 the application having been filed after the notification would be well within the pecuniary jurisdiction of the Tribunal is the principle laid down therein. Even without referring to the judgments relied upon by the Counsel for the OC it can be concluded that the debt is within the pecuniary limits of this Tribunal.

7. With regard to the pre-existing dispute, the pendency of the case under Section 138 NI Act does not amount to pre-existing dispute and the law is too well settled on the said aspect. Moreover, it would

be a strong evidence of not only the debt but also the default. There is no other material placed before the Tribunal with regard to any pre-existing dispute. Hence, in view of the above, it can be safely concluded that the CD is due the claim amount and failed to discharge the said debt.

8. Hence, I am of the considered view that it is a fit case to admit and order initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Operational Creditor suggest one **Mr. Mr. Popat Mayur Rajendrakumar**, (Registration No. **IBBI/IPA-001/IP-P-01918/2020-2021/13046**) as Insolvency Resolution Professional (IRP) and sought the Tribunal to appoint him as IRP. **Mr. Popat Mayur Rajendrakumar** appointed as Insolvency Resolution Professional (IRP).

ORDER

The Company Petition is admitted. The Corporate Insolvency Resolution Process of the Corporate Debtor shall commence from this date and shall be completed within 180 days hence.

- i. **Mr. Popat Mayur Rajendrakumar**, (Registration No. **IBBI/IPA-001/IP-P-01918/2020-2021/13046**), having office at 802, Sainath Heights, Besides Isckon Temple, Near Harinagar Crossing, Vadodara, Gujarat-390020; Mobile:**8000334511**; e-mail: **mayurpopat2002@gmail.com**; is appointed as the

Interim Resolution Professional. No disciplinary proceeding is pending against him as per the IBBI website.

- ii. He is directed to take charge of the Corporate Debtor's management forthwith and take necessary steps in furtherance of the CIRP in terms of Sections 13(2), 15, 17, 18 and 20 of Code and Rules made thereunder.
- iii. Moratorium in respect of the Corporate Debtor is hereby declared in terms of Section 14 of the Code.
- iv. The Directors, Promoters or any other person(s) associated with the management of Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 of the Code for effectively discharging his functions under the Code.
- v. The Registry shall communicate the order to the Operational Creditor and the Corporate Debtor forthwith.
- vi. The Operational Creditor and the Registry shall send the copy of this order to IRP for necessary compliance.

Sd/-
JUSTICE TELAPROLU RAJANI
MEMBER JUDICIAL

Swamy Naidu