

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
11-03-2024 AT 10:30 AM**

CP(IB) No. 389/9/HDB/2020

And

Ivn. P (IBC) 42/2023 in IA No. 1217/2023, IA(IBC) 1217, 1891 & 1900/2023 in

CP(IB) No. 389/9/HDB/2020

u/s. 9 of IBC, 2016

IN THE MATTER OF:

Hemanalini Traders

...Operational Creditor

VS

Nexus Feeds Ltd

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

O R D E R

Ivn. P (IBC) 42/2023 in IA No. 1217/2023

Orders pronounced in Ivn P (IBC) 42/2023. In the result, **this application is dismissed. No costs.**

IA(IBC) 1217/2023

In the light of the orders passed in IA (IBC) 1891/2023. Matter re-opened, for further hearing, matter adjourned to 05.04.2024.

IA(IBC) 1891/2023 in IA(IBC) 1217/2023

This is an application seeking to set aside the order dated 25.09.2023 whereby opportunity to file counter has been forfeited. Notice given. Counter filed. as can

be seen that after giving sufficient opportunity only, the opportunity to file counter has been forfeited. Therefore, if at all the opportunity is to be restored the same shall be on terms. So, considering the facts and circumstances **we allow this IA No 1891/2023**, on condition of payment of costs of Rupees 10,000/- payable to the Prime Minister Reliefs Fund within 7 days from the date of this order and in default application stands dismissed. In case of compliance, IA No 1217/2023 stands re-opened and for further hearing call on 05.04.2024.

IA(IBC) 1900/2023

It is represented by the learned counsel for the Resolution professional that post previous hearing the erstwhile promoters have submitted a fresh plan and the same is under consideration by the COC. In the light of the submission hearing in IA No 1900/2023 is deferred till 05.04.2024. A memo to that effect also has been e-filed on 07.03.2024.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I, HYDERABAD**

Intervention Application (IBC) No. 42 of 2023

In

IA. No. 1217/2023

In

CP (IB) No. 389/9/HDB/2020

*[Under Rule 11 of the NCLT Rules, 2016 with section 18 & 60(5)(c) of Insolvency and
Bankruptcy Code 2016]*

IN THE MATTER OF M/S NEXUS FEEDS LIMITED

Between:

G. Ramakrishna Reddy,
Ex- Promoter & suspended Director of Board
Of Nexus Feeds Limited & Joint Resolution
Applicant, R/o 28-8-28, Shiridi Sai Apartment,
Balasumudi, Bhimavaram, Sivaraopeta,
West Godavari District- 534202

... Applicant

VERSUS

1) Dantu Indu Sekhar
Resolution Professional for M/s Nexus Feeds Limited,
Flat no. 104, Kavuri Supreme Enclave,
Kavuri Hills, Madhapur, Hyderabad- 500033.

2) Nakshatra Feeds India Limited,
Rep by its Director Kalaparti Jyothi,
Office at 48-19-04, Samatha Residency, Ramchandra
Nagar, Vijayawada- 520010, Reg Office: Flat no. 201,
KVC Towers, 100 Ft Road, Enikepadu, Vijayawada- 521108

... Respondents

Date of Order: 11.03.2024

Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)

Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Applicant : Bommineni Vivekananda, Advocate
For Respondents : none

PRE: BENCH ORDER

The present application is filed by the Ex-promoter and Suspended Director of Board with a prayer to implead himself as a party Respondent in I.A. No. 1217 of 2023 in CP (IB) No. 389/9/HDB/2020.

1) Averments in the Application:

1.1. That the Corporate Debtor entered into a lease agreement with M/s. Nakshatra Feeds Limited wherein the company has given on lease the factory premises and machinery from 01.04.2019 till 31.03.2024. As on date the lease period is still subsisting and would expire only by 31.03.2024. It is submitted that the Corporate Debtor received a security deposit of Rs. 1 Cr in the year 2019 towards lease security from M/s. Nakshatra Feeds Limited in the form of stocks and the same was reflected in the audited financials which is available with the Resolution Professional of the company.

1.2. It is averred that in the year 2020 as the operations were affected due to Covid 19, M/s. Nakshatra Feeds Limited requested for a reduction of lease rent

from Rs.15 lakhs to Rs.7.50 lakhs and the same was agreed. Since then, M/s. Nakshatra Feeds Limited has been paying Rs. 7.50 lakhs rent from April, 2020 onwards, which is reflected in the books of the company and duly accounted for in the audited financials. The said was confirmed by the Applicant in every meeting of the CoC and M/s. Nakshatra Feeds Limited has been paying the rent accordingly since April, 2020 at Rs.7.50 lakhs per month till December, 2022 and stopped paying rent from January, 2023 onwards. It is alleged that the receivables on account of lease rent arrived by the IRP/RP are not correct as all the rent details were remitted through Bank accounts, copies of which were already submitted to RP.

1.3. That M/s. Nakshatra Feeds Limited stopped making rental payments since their security deposit of Rs. 1 Cr was held up with Company/RP and needed clarity on refund of the deposit, as M/s. Nexus Feeds Limited was admitted into CIRP and IRP issued letters to vacate the premises. It is submitted that on enquiry about balance payments, the Corporate Debtor was informed by M/s. Nakshatra Feeds Limited that Resolution Professional of Nexus Feeds filed an IA against them with a prayer to handover the possessions of the property as the said is Corporate Debtor's asset.

1.4. It is averred that the Applicant herein are Ex-Promoters who are also Guarantors to the credit facilities availed by the Corporate Debtor making then

an important part of the stakeholders. Further any stoppage of operations by forcing the Lessee to vacate the premises without making any alternative arrangements for keeping the Corporate Debtor as a going concern will adversely affect the workforce which internally affects the interest of the Corporate Debtor leading to deterioration in value of the Corporate Debtor's assets. It is alleged that the applicants Resolution plans are put forth before CoC for their consideration in the meantime if the vacation of premises is allowed it may further deteriorate the value of the machinery, ultimately resulting in scrap value for the machinery.

1.5. It is alleged that the Respondent no. 1 ought not to have approached the Tribunal by way of filing an application but ought to have availed remedy from Civil laws available to enforce the payment of the lease rental amounts. That if the Resolution Professional is allowed to go ahead with any actions in pursuance to notice of termination, the same will cause grave prejudice to the applicant herein and it will cause irreparable loss and injury to the applicant. It is further submitted that the Resolution Professional has filed the instant IA No. 1217 of 2023, without impleading the Applicant herein, who is necessary and proper Party to the Application, since the process of termination of the lease agreement and seeking a direction to vacate the leased which has been undertaken by the Resolution Professional is without any basis in law.

2) Respondent did not file any counter. However, on going through the application filed by the applicant, following point arises for our consideration:

Point : “ Whether there is any Locus standi of a promotor/suspended director to intervene in an application filed by the resolution professional for seeking possession of the property from the respondent who has entered into a lease agreement with the corporate debtor?”

3) We have heard the Learned counsel Bommineni Vivekananda appearing for the applicant, none appeared for the respondent.

Point: “ *Whether there is any Locus standi of a promotor/suspended director to intervene in an application filed by the resolution professional for seeking possession of the property from the respondent who has entered into a lease agreement with the corporate debtor?* ”

Submissions:

Learned Counsel submitted that the Corporate Debtor received a security deposit of Rs. 1 Cr in the year 2019 towards lease security from M/s. Nakshatra Feeds Limited in the form of stocks and the same was reflected in the audited financials. As the operations were affected due to Covid 19, M/s. Nakshatra Feeds Limited requested for a reduction of lease rent from Rs.15 lakhs to Rs.7.50 lakhs and the same was agreed and duly paid. The said fact was confirmed by the Applicant in every meeting of the CoC and M/s. Nakshatra Feeds Limited has been paying the rent accordingly till December, 2022 and stopped from January, 2023 onwards. It is further submitted that the receivables on account of lease rent arrived by the IRP/RP are not correct as all the rent details were remitted through Bank accounts, copies of which were already submitted to Resolution Professional.

5) In the present case, it is an admitted fact that the Corporate Debtor entered into a Registered lease agreement dated 21.08.2019 with M/s. Nakshatra Feeds Limited wherein the company has given on lease the factory premises and machinery from 01.04.2019 till 31.03.2024. Accordingly, the lease period is still

subsisting. We find that the contentions put forth by the Applicant are essentially identical to those articulated by M/s. Nakshatra Feeds Limited in their reply in IA. 1217/2023. The applicant has failed to submit any proof evidencing that it is a stakeholder in any way in M/s Nakshatra Feeds Limited, respondent in IA no 1217/2023 and therefore any order in 1217/2023 will have no bearing on the applicant in the present application. The Applicant also failed to present any fresh grounds to substantiate their petition for intervention in the Interlocutory application under consideration.

6) Keeping in view the above facts , we decide that applicant who is suspended director of the corporate debtor has no locus standi to intervene in an application filed by the resolution professional for seeking possession of the property from the respondent who is a third party and has no connection with the applicant .The point is accordingly answered

7) In view of the answer to the point for our consideration, we decide that this application is liable to be dismissed. Hence dismissed and disposed without costs.

SD

Charan Singh
Member Technical

SD

Dr. Venkata Ramakrishna Badarinath Nandula
Member Judicial

Bhargavi Kinhalkar/Pavani