

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

CP (IB) No. 1671/KB/2019

In the matter of:

A petition under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Anmol Feeds Private Limited
[CIN: U15339WB2001PTC93568]

...Operational Creditor

Versus

Dynamic Hatcheries Private Limited
[CIN: U05000WB2011PTC161169]

...Corporate Debtor

Order reserved on: 10 June 2022

Order pronounced on: 30 June 2022

Coram:

Shri Rajasekhar V.K. : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For the Operational Creditor : Mr. Chayan Gupta, Advocate
Mr. Sourav Bhakat, Advocate
Mr. Debayan Sen, Advocate

For the Corporate Debtor :Mr. Rahul Auddy, Advocate
Mr. Aditya Gooptu, Advocate

ORDER

Rajasekhar V.K., Member (Judicial)

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code") by Anmol Feeds Private Limited

(“Operational Creditor”), a company incorporated under the provisions of the Companies Act, 1956 and represented by its Manager, Legal, Mr. Biswaroop Roy, authorised by a Board Resolution dated 20 May 2019, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Dynamic Hatcheries Private Limited (“Corporate Debtor”).

3. The Corporate Debtor is a company limited by shares incorporated on 24 March 2011, having CIN: U05000WB2011PTC161169, under the Companies Act, 1956, with the Registrar of Companies, West Bengal, Kolkata. Its registered office is at 36, Beck Bagan Row, Kolkata, West Bengal- 700017, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 26 September 2019 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.40,00,000/- (Rupees Forty Lakh only).
5. The learned Counsel for the Operational Creditor states as follows:-
 - a. The Operational Creditor supplied poultry feeds to the Corporate Debtor from time to time and raised invoices amounting to Rs.95,11,569/- (Rupees Ninety-Five Lakh Eleven Thousand Five Hundred and Sixty-Nine only).
 - b. In a meeting held on 11 October 2017¹, The Corporate Debtor acknowledged that a sum of Rs.42,00,000/- (Rupees Forty-Two Lakh only) and it was agreed that if the Corporate Debtor paid a sum of Rs.35,00,000/- (Rupees Thirty-Five Lakh only) within 23 October 2017 then the debt due would stand satisfied. But the Corporate Debtor only made a payment of Rs.2,00,000/-

¹ Annexure B at Pp.54-56 of the C.P.

(Rupees Two Lakh only) on 23 October 2017 and no further payment was made.

- c. A demand notice under section 8 of the Code was issued on 12 February 2019² and was received by the Corporate Debtor on 14 February 2019.
- d. The Corporate Debtor raised unsubstantiated issues in its letter dated 16 March 2019³.

6. Apart from the aforementioned documents, the Operational Creditor has placed the following documents on record:

- a. Copies of ledger account; annexed to the petition and marked as Annexure C at pages 57-61.
- b. Copies of invoices from 01 April 2015 to 24 February 2016; annexed to the petition and marked as Annexure A at pages 19 to 54.

7. The Corporate Debtor filed its reply affidavit affirmed on 10 January 2020 wherein it states as follows:

- a. The Company Petition has not been filed in a correct format and Form 5 is incomplete.
- b. The Operational Creditor is one of the major suppliers of raw materials for poultry feeds and hence, in order to maintain cordial relations, the Corporate Debtor made payments at regular intervals inspite of several issues and dispute with regard to the quality of materials supplied by the Operational Creditor.

² Annexure D of the CP

³ Annexure E of the CP

- c. The Corporate Debtor *vide* its letter dated 21 June 2017 had raised several issues with respect to quality and arbitrary costing. It is submitted that all the correspondences were done *via* telephonic discussions as the Corporate Debtor is a small entity.
 - d. The invoices annexed with the Company Petition are false and fabricated and the Operational Creditor has relied upon different set of documents in the section 8 notice. The invoices were not received by the Corporate Debtor.
 - e. Minutes of 11 October 2017 cannot be considered as admission as the invoices were never received from the Operational Creditor.
 - f. The Corporate Debtor has raised disputes in the reply dated 16 March 2019.
8. The Operational Creditor in its reply to the Corporate Debtor has stated that:
- a. Mr. Biswaroop Roy has been authorized to file the Company Petition by a Board Resolution passed on 20 May 2019.
 - b. The Operational Creditor relied upon the delivery challans at the time the section 8 notice was sent. The delivery challans and the invoices reflect that goods were delivered to the Corporate Debtor.
9. The main defences taken by the Corporate Debtor here are that:
- a. The Company Petition is defective.
 - b. The meeting held on 11 October 2017 cannot be considered.
 - c. The invoices were never received by the Corporate Debtor.

10. The Operational Creditor has filed its Board Resolution along with the Vakalatnama, the Form is complete in all respect hence, the first defence of the Corporate Debtor does not stand.
11. The Corporate Debtor has disputed the minutes of the meeting held on 11 October 2017 and has submitted that it should not be considered. On perusal of the minutes of the meeting it is seen that the Director of the Corporate Debtor had attended the said meeting hence, we are not inclined to consider the contention that there was no debt as the invoices were never received by the Corporate Debtor. The Corporate Debtor in the said meeting has acknowledged that there is a debt that is due and payable.
12. Be that as it may, the next contention raised by the Corporate Debtor is that the invoices annexed to the section 8 notice and the invoices attached to the Company Petition are not the same. On perusal of the invoices it is seen that the invoices attached to the Company Petition are computerized invoices and the invoices annexed to the demand notice are the delivery challans. On comparison of the invoices annexed with the Company Petition and delivery challans annexed to the demand notice, it has been observed five invoices match with the Serial numbers.

Sl. No.	Invoice Sl. No.	Demand Notice (page)	Company Petition (page)	Amount
1.	JN 002	35	19	₹4,16,950/-
2.	JN 187	34	25	₹3,50,900/-
3.	JN 628	26	35	₹3,29,400/-
4.	JN 667	25	39	₹4,41,120/-

5.	JN 743	24	44	₹3,37,610/-
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Hence, even if we consider these five invoices, the minimum threshold limit has been reached as on the date the order was passed i.e. ₹1,00,000/.

13. In view of the above circumstances, the present petition made by the Operational Creditor is complete in all respects as required by law. The petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4(1) of the Code, *i.e.*, Rupees One Lakh, at the relevant time.

14. It is, accordingly, hereby ordered as follows:-

- a. The application bearing CP (IB) No. 1671/KB/2019 filed by Anmol Feeds Private Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Dynamic Hatcheries Private Limited, the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- e. **Mr. Vijay Kumar Goel**, registration number **IBBI/IPA-001/IP-P-02554/2021-2022/13957**, email: goelkumarvijay@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- g. The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- h. The Operational Creditor shall deposit a sum of Rs.3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

