

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD**

SPECIAL BENCH - COURT 1 (URGENT HEARINGS THROUGH VIDEO CONFERENCE)

**PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI - MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 13.01.20201 AT 10:30 AM

| | |
|----------------------------------|-----------------------------------|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | CP (IB) No. 469/9/HDB/2019 |
| NAME OF THE COMPANY | Gayatri Sea Foods & Feeds Pvt Ltd |
| NAME OF THE PETITIONER(S) | Uni-President Vietnam Co. Ltd |
| NAME OF THE RESPONDENT(S) | Gayatri Sea Foods & Feeds Pvt Ltd |
| UNDER SECTION | 9 of IBC |

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 | |
|------------------------|-------------|------------------------|-----------|--|
| | | | | |
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ORDER

Orders passed vide separate orders.
CP (IB) No. 469/9/HDB/2019 is admitted.


MEMBER (TECHNICAL)


MEMBER (JUDICIAL)

Pavani

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

**CP (IB) No. 469/9/HDB/2019
U/s. 9 of Insolvency & Bankruptcy Code, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016**

Between:

M/s. Uni President Vietnam Co. Ltd.
161820, Phase DT 743 Road
Song Than II Industrial Zone
Di An Town, Binh Duong, Vietnam

... Petitioner / Operational Creditor

Vs.

M/s. Gayathri Sea Foods & Feeds Pvt. Ltd.
2-1250, 4th Floor, S.V.R.Towers
JP Road, Bhimavaram, West Godavari Dist.
Andhra Pradesh – 534 202

... Respondent/ Corporate Debtor

Date of Order: 13.01.2021

Coram:

Hon'ble Shri K. Anantha Padmanabha Swamy, Member (Judicial)

Hon'ble Sri Veera Brahma Rao Arekapudi, Member (Technical)

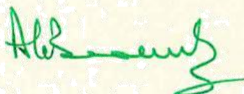
Parties / Counsels present:

For the Petitioner : Ms. Anjali Agarwal, Advocate

For the Respondent: Mr. S. Balaji Rao, Advocate

Per: Sri Veera Brahma Rao Arekapudi, Member (Technical)

Heard on: 09.12.2020, 16.12.2020





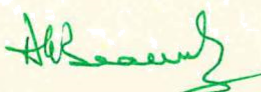
ORDER

1. The instant Petition is filed by M/s. Uni President Vietnam Co. Ltd. / Operational Creditor alleging that M/s. Gayatri Sea Foods & Feeds Pvt. Ltd. /Corporate Debtor had defaulted an amount of USD 244,106 equivalent to Rs.1,58,17,409.72 (Rupees One Crore Fifty Eight Lakhs Seventeen Thousand Four Hundred Nine and paise Seventy two only) (applying conversion rate as on 27.03.2018) as on 27.03.2018. The details are as follows:

| S.No. | Invoice No. | Invoice Date | Amount (USD) |
|--|----------------|--------------|-----------------------|
| 1. | GA/UP-06/06/18 | 27.03.2018 | 103,922 |
| 2. | GA/UP-07/07/18 | 27.03.2018 | 140,184 |
| Total (USD) | | | 244,106 |
| Total Amount in Rs. (applying conversion rate as on 27.03.2018) | | | 1,58,17,409.72 |

Hence, this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, r/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The averments of the petition filed by the Petitioner/Operational Creditor in brief are described hereunder:
- i. M/s. Uni-President Vietnam Co. Ltd./Operational Creditor is engaged in the business of manufacture and trading in aquatic feed of various types. Both the parties i.e. Operational Creditor




and Corporate Debtor entered into the Sale Contracts for supply of Prawn Feed as follows:

| Sl.No. | Sales Contract No. & Date | Amount (USD) |
|--------|------------------------------------|--------------|
| 1. | No.GA/UP-06/19032018 19.03.2018 | 103,922 |
| 2. | No.GA/UP-07/19032018 19.03.2018 | 140,184 |

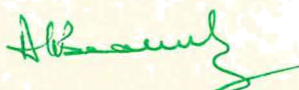
Copies of the Sales Contracts are shown at page nos. 8 to 11 of the petition.

- ii. It is averred against the Sales Contracts cited above, the Operational Creditor exported the prawn feed to Corporate Debtor from Vietnam and raised two Commercial Invoices mentioned at page nos. 12 to 15 of the petition and in terms of the Sales Contracts, the amounts became due on 27.03.2018. It is also averred the Corporate Debtor did not make the payment despite receipt of goods covered by the above-mentioned invoices and the Bills of Ladings No.0398A06939 and 0398A06940, each dated 27.03.2018.
- iii. It is averred Ms. Lavanya Mohana Ruban, HR Manager is authorised to sign the affidavit, vakalat and all other necessary documents and to do all such acts, filings for the purpose of filing petition under the Insolvency & Bankruptcy Code, 2016 before the appropriate court of law for the recovery of the admitted dues payable by M/s. Gayathri Sea Foods & Feeds Pvt. Ltd. Bhimavaram, Andhra Pradesh
- iv. It is averred the Operational Creditor made several requests to clear the outstanding payments but no payments were received from the Corporate Debtor and the Operational Creditor was constrained to issue demand Notice on 12.03.2019 to the Corporate Debtor under Insolvency and Bankruptcy Code, 2016.

- v. It is averred even after the issue of the demand notice, neither received any payment nor any convincing response from the Corporate Debtor and any notice of dispute towards the outstanding payment. Hence the petition.
 - vi. It is also averred as per the directions of the Adjudicating Authority, the Operational Creditor again sent a notice through Registered Post which was received by the Corporate Debtor on 24.07.2019
 - vii. It is also averred the Corporate Debtor sent an e-mail dated 22.02.2019 accepting his liability which is shown at page nos.20 to 21 of the application.
 - viii. Hence, petition is liable to be admitted for default of Operational Debt by Corporate Debtor.
3. The averments made in the counter filed by M/s. Gayatri Sea foods & Feeds Private Limited / Corporate Debtor are described as follows:
- i. The Respondent denies all the averments made in the Application filed by the Operational Creditor and admits those are specifically mentioned hereunder.
 - ii. It is averred that the Operational Creditor filed the Company Petition No.469/9/HDB/(IB)/2019 under Rule 6 of Insolvency & Bankruptcy Code, 2016 claiming a sum of 1,58,17,409.72 under two invoices for supply of Prawn feed and denied stating that the Applicant / Operational Creditor is not entitled to receive the said amount from the Respondent / Corporate Debtor.



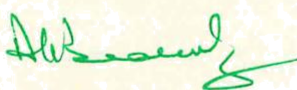
- iii. It is averred in para 2 of the counter, Ms. Lavanya Sekhar, HR Manager of the company was authorised vide Board Resolution dated 10.04.2019 to sign all the documents but Form-5 was signed by Ms. Lavanya Mohana Ruban and expressed doubt whether both the persons are same or not and whereas the Board Resolution dated 10.04.2019 and the Form-3 which was enclosed with the compilation is 12.03.2019. Hence, Ms. Lavanya Sekhar is not authorised by the Board to issue Form-3 notice to the Corporate Debtor with back date and submit before the NCLT, Hyderabad Bench.
- iv. It is also averred in para 3 of the counter that the Power of Attorney dated 10.04.2019 authorising Ms. Lavanya Mohana Ruban, HR Manager was not made on any Non-Judicial Stamp Paper to sign the Affidavit, Vakalat and all other necessary documents. It is also averred in the absence of valid Indian Stamp Paper, the Application filed under I&B Code, 2016 is liable to be dismissed in limini.
- v. It is averred in para 4 of the counter that both the parties entered into two Sales Contracts is true.
- vi. It is averred in para 5 of the counter that the Operational Creditor has sent the Prawn Feed by ship, which is lessor in quality as also most of the prawns in the water fields were died due to bad odoured prawn feed sent by the Operational Creditor. There are huge complaints from the farmers who used this Prawn Feed and the Corporate Debtor sustained huge losses by using and reselling the products to farmers. The same was informed immediately to the local representatives and also company directors / authorities at Vietnam. The Corporate Debtor informed the Operational Creditor that he will raise a complaint with Food and Drugs Controllers in India about sending the wrong and outdated





Prawn Feed. But the Operational Creditor promised to settle the issue amicably. Having long business relationship, the Corporate Debtor kept silent anticipating the response from the Operational Creditor all these days having hope and faith on the Operational Creditor. But instead of sending the fresh Prawn feed and make good of the loss sustained by the farmers and referring the same to an Arbitrator with Vietnam Jurisdiction which was mentioned a clause in the Sales Contract, straight away they invoked the provisions of Insolvency & Bankruptcy Code, 2016 before this Hon'ble Tribunal.

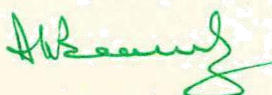
- vii. It is averred in para 7 of the counter that the Corporate Debtor has not received any Form-3 but received only an intimation from the Registry of this Hon'ble Tribunal. It is also averred that the Operational Creditor has not issued Form-4 as stipulated under Rule 5 of I&B code, 2016 and in the absence of issue of both the notices as stipulated, the Application filed by the Operational Creditor liable to be dismissed without any exemplary costs.
- viii. It is averred in para 9 of the counter that the Corporate Debtor never confirmed their debt by way of sending any Email/letter and also averred that the corporate Debtor is solvent and able to discharge all its liabilities due to its creditors and stated that it is a concocted story made only for filing the present application before the Hon'ble NCLT, Hyderabad.
- ix. It is prayed to take the counter on record and dismiss the Application filed by the Operational Creditor and the Corporate Debtor is able to discharge all its liabilities.





4. The averments made in the Rejoinder filed by M/s. Uni President Vietnam Co. Ltd. / Operational Creditor in reply to the counter filed by M/s. Gayatri Sea Goods & Feeds Pvt. Ltd. / Corporate Debtor are described as follows:

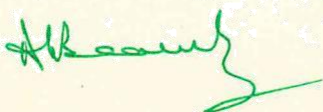
- i. In reply to para 2 of the Counter filed by the Corporate Debtor, it is averred that Ms. Lavanya's father's name is Mr. Sekhar and after her marriage, her surname has been changed to Mohana Ruban. The PAN card of Ms. Lavanya shows her name prior to marriage i.e. Ms. Lavanya Sekhar and her Passport No. J9429797 shows her present full name as per the latest records. Therefore, Ms. Lavanya Sekhar and Ms. Lavanya Mohana Ruban are one and the same person. It is also averred vide Board Resolution dated 10.04.2019 Ms. Lavanya Sekhar was authorised for filing necessary application before the Hon'ble NCLT, Hyderabad and vide Board Resolution dated 12.02.2019 Ms. Lavanya was authorised to initiate appropriate steps for recovery of the dues payable by the Corporate Debtor.
- ii. In reply to para 3 of the counter, it is averred the Power of Attorney in favour of Ms. Lavanya Mohana Ruban was executed as per the laws of Vietnam and it has been attested by Mr. R.S.Chowhan, Consul, Consulate General of India, Ho Chi Minh city. It is also averred that any document cannot be executed in an Indian Stamp paper outside the territory of India.
- iii. In reply to para 5 of the counter, it is averred that the Corporate Debtor raised an issue with regard to the quality of prawn feed supplied by the Operational Creditor. It is also averred that the Operational Creditor regularly following up the matter with the Corporate Debtor since 2018 vide emails dated 24.08.18, 03.10.18, 29.12.18, 23.01.19, 22.02.19 and





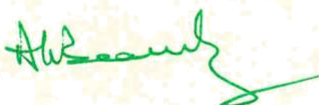
30.03.19 for payment of the dues but the Corporate Debtor sought time to settle the dues. It is also averred now the objection raised regarding the quality of the materials supplied is clearly an afterthought and has only been made to delay the inevitable.

- iv. In reply to para 6 of the counter, it is averred that there is no need to invoke the arbitration clause as the Corporate Debtor has promised to pay the dues to the Operational Creditor and therefore, there was no dispute raised by the Respondent at any point of time. It is also averred that it is settled law that for admitted dues, the jurisdiction of this Hon'ble Tribunal under the I&B Code, 2016 can straight away be invoked.
 - v. In reply to para 7 of the counter, it is averred that non-receipt of Form-3 is factually incorrect. The Form-3 was sent through Speed Post Receipt No.ET379603900IN on 12.03.2019 and the same was delivered to the Respondent. It is also averred that the fact of dues payable to the Operational Creditor is not in dispute in any event.
5. Heard the Counsel for Petitioner / Operational Creditor and the Respondent / Corporate Debtor. The Learned Counsel for Petitioner submits that Operational Creditor and Corporate Debtor have entered into two Sales Contracts on 19.03.2018 for exporting the Prawn Feed from Vietnam.
 6. Learned Counsel for Petitioner further submitted that the Operational Creditor accordingly raised two invoices both dated 27.03.2018 totalling to USD 244,106 which is equivalent to Rs.1,58,17,409.72 (applying conversion rate as on 27.03.2018). Copies of these invoices are available at page nos. 12 to 15 of the petition. It is submitted by him that the Corporate Debtor inspite



of various reminders did not pay any amount against the said invoices and therefore Operational Creditor issued statutory Demand Notice on 12.03.2019 demanding from the Corporate Debtor an amount of Rs.1,58,17,409.72. It is submitted by him that the Corporate Debtor did not bother to send any reply to the said notice. Therefore, there being no other recourse than to file a petition under the Insolvency & Bankruptcy Code, 2016, Operational Creditor filed the present petition. In view of the said submissions, the Counsel pleads for admission of the present petition against the Corporate Debtor.

7. We have perused the submissions made by both the counsels in the matter. The arguments made by the Corporate Debtor that the Operational Creditor supplied the lesser quality prawn feed. The counsel has not submitted any proof that they raised this quality issues in response to Form-3 notice or demand notice nor thereafter. It appears to be an after thought that they are raising this issue in their counter. After perusing the records, we are convinced that Operational Creditor has not received his dues from the Corporate Debtor and the submissions made by the Corporate Debtor in this regard appears to be after thought and was not submitted by any documentary evidence.
8. The Operational Creditor and Corporate Debtor submitted their written submission. We have perused and taken into consideration the written submissions filed by both the parties.
9. In the light of the above, the Operational Creditor is yet to receive his dues from the Corporate Debtor. The submissions made by the Corporate Debtor is not convincing and accordingly the application for CIRP of the Operational Creditor has been admitted.

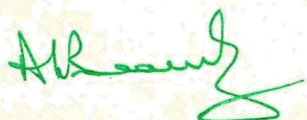




10. The Operational Creditor failed to name anyone as Interim Resolution Professional and has requested the Tribunal to appoint one for the Corporate Insolvency Resolution Process. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period from 1st January, 2021 to 30th June, 2021 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr. Kasi Srinivas having Registration No. IBBI/IPA-003/IP-N00237/2019-2020/12840, Mobile No. 8008022887 e-mail id: Srinivaskashyap111080@gmail.com as Interim Resolution Professional. The aforesaid interim resolution professional has no disciplinary proceedings pending against him. He shall file his written communication and all relevant paper immediately before Registrar of this Tribunal but not later than two days.

11. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with the following directions:-

- i. The Bench hereby prohibits 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; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;



- ii. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- iii. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- iv. That the order of moratorium shall have effect from the date of the Order till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- v. That the Petitioner is directed to pay a sum of Rupees 2,00,000/- (Two Lakhs Only) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.
- vi. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- vii. Accordingly, this Petition is admitted.



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