

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

COURT - II

CP (IB) 198/NCLT/AHM/2021

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

Ms. Bhumisha Shah
Sole Proprietor of Candida Bio
Aqua Solutions

Applicant/ Operational Creditor

Versus

West Coast Frozen Foods Private Limited

**Respondent/
Corporate Debtor**

Order Pronounced on: 10 /02/2023

Coram:

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

MEMO OF PARTIES

Ms. Bhumisha Shah

Sole Proprietor of Candida Bio Aqua Solutions

Shop No. 22 to 24 Luprit Arcade,

Nr. HP Gas Dealer

Beside Indian Oil Petrol Pump

Olpad,

Surat 394 540

Gujarat State

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Applicant/Operational Creditor

Versus

West Coast Frozen Foods Private Limited

Plot No. 321, 322, 323, ORMA,

ORMA Road

Olpad Saras Road

Olpad

Surat 394540

Gujarat State

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Respondents/Corporate Debtor

Appearance:

For Applicant : Ms. Noopur Dalal, Advocate

For the Respondent : Mr. Jay Kansara Advocate a/w.

Ms. Aaksha Sajnani, Advocate

i/b. Wadia Ghandy & Co.

ORDER

1. This application is filed on 23.09.2021 under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Ms. Bhumisha Shah, Sole proprietor of **Candida Bio Aqua Solutions** (for brevity 'Applicant'), with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against **West Coast Frozen Foods Private Limited** (for brevity 'Corporate Debtor').

2. The Applicant is a sole proprietorship firm of Ms. Bhumisha Shah having GST No. 24BBOPP1922Q1Z3 and having office at Shop No. 22 to 24 Luprit Arcade, Nr. HP Gas Dealer, Beside Indian Oil Petrol Pump, Olpad, Surat, Gujarat 394 540. The applicant is engaged in the business of shrimp and other aqua culture products.

3. The corporate debtor is a private limited company, incorporated on 31.03.2005 under the provisions of Companies Act, 1956 duly registered with Registrar of Companies, Ahmedabad, Gujarat State

with CIN: U15120GJ2005PTC095804, having registered office at Plot No. 321, 322, 323, ORMA, ORMA Road, Olpad Saras Road, Olpad, Surat, Gujarat 394 540, Gujarat State. The authorised share capital of the corporate debtor is Rs. 5,00,00,000/- and paid up share capital is Rs. 3,45,00,000/-. The corporate debtor is engaged in the business of sale of shrimp feed and other aqua culture products.

4. It is submitted by the applicant that against oral purchase order received from the corporate debtor, the applicant had supplied shrimps and sea food material to the corporate debtor under twelve invoices during the period from 20.10.2018 to 11.12.2018 worth Rs. 1,15,88,665/- out of which the corporate debtor made payment of Rs. 40,00,000/- on 20.12.2018 and remaining amount of Rs. 75,88,665/- with interest being total amount of Rs. 1,21,41,864/- is pending till date. Legal notice dated 10.02.2020 was sent to the corporate debtor demanding unpaid amount aggregating to Rs. 75,88,665/-. Thereafter, demand notice in form 3 dated 07.07.2021 under Section 8 of the Insolvency & Bankruptcy Code, 2016 was duly served on the corporate debtor. The applicant has produced consignment track report evidencing delivery of notice on the corporate debtor.

5. Thereafter, the instant application was filed on 21.09.2021 by the applicant under Section 9 of the Insolvency and Bankruptcy Code, 2016.

6. The corporate debtor filed affidavit in reply stating that:
 - Advocate Mr. Bhargav C. Thakkar who has issued the demand notice dated 07.07.2021 is not authorised to issue such notice.
 - The amount of default does not cross the threshold of Rs. 1.00 crore.
 - The applicant has suppressed material facts;
 - Prior to issuance of demand notice, disputes were raised by the corporate debtor with respect to the incorrect and unsubstantiated demand made by the applicant.
 - The applicant has concealed the fact that the demand notice dated 07.07.2021 issued by the applicant was replied by the corporate debtor vide letter dated 12.08.2021, copy of which is annexed to the reply.
 - Pursuant to verbal agreement entered into between the applicant and the corporate debtor, between October 2018 and December 2018, corporate debtor had received supply of shrimp from the applicant from time to time for an aggregate value of Rs. 1,08,54,747/-. Apart from the delivery challans, no other documents such as invoices or any other documents were provided by the applicant.

- In December, 2018, at the request of the applicant, the corporate debtor had made ad hoc payment of Rs. 40,00,000/-.
- Consequent to the business dealings between the parties till 31.03.2019, all amounts payable by the corporate debtor to the applicant towards supply of shrimp, were set off against the receivables by Fine Foods and West Coast Aqua i.e. group companies of the corporate debtor. On the contrary, group company of the corporate debtor is entitled to receive a sum of Rs. 1,02,071/- from the applicant. A Civil Suit bearing No. RCS 05 of 2020 for recovery of the said amount of Rs. 1,02,071/- is pending for adjudication before Principal Civil Judge, Olpad, Surat, copy of which is annexed to the reply.
- The applicant has intentionally suppressed the fact that the notice issued by the applicant dated 10.02.2020 was replied by the corporate debtor vide letter dated 03.03.2020.
- The corporate debtor employs more than 131 workers including direct employees and those on contract basis.
- The liability for amount claimed by the applicant does not exist.

7. Pursuant to order dated 07.04.2022, the applicant filed affidavit in support of removal of defects in invoices annexed with the application. It is submitted by the applicant that all twelve invoices attached with the application were computer generated and hence not signed.

8. The applicant filed written submissions stating that against the valid and confirmed oral purchase orders received from the corporate debtor goods were supplied and had raised twelve computer generated sales invoices were raised for an aggregate amount of Rs. 1,15,88,665/- out of which the corporate debtor made payment of Rs. 40,00,000/- and the remaining amount of Rs. 75,88,665/- is pending. Demand notices in Form 3 & Form 4 both dated 07.07.2021 were issued through Registered A.D. post calling upon the corporate debtor to pay an amount aggregating to Rs. 1,21,41,864/- including interest and other charges. Said demand notice was replied by the corporate debtor by letter dated 12.08.2021. Authority letter dated 05.04.2019 for issuance of demand notice and filing of application is annexed at page No. 98 to the application. All the twelve invoices issued to the corporate debtor clearly stipulate the provision of interest on delayed payment. The corporate debtor had made part payments against

aforesaid invoices and no dispute on interest clause was ever raised. There is no pending dispute between the corporate debtor and operational creditor and no dispute was raised before issuance of demand notice. The corporate debtor has failed to provide any document in their reply to demand notice evidencing pre-existence of dispute. The setting off of the debts of the group transactions of the operational creditor and corporate debtor as shown by the corporate debtor in his reply is baseless and against the accounting standards and also has never been approved or consented or agreed by the applicant. Regarding authenticity of invoices issued to the corporate debtor, the invoices attached with the application are computer generated and hence were not signed. The applicant has relied upon the following judgements copies of which are annexed to the written submissions to support its arguments with respect to interest on delayed payment:

- (i) *Mr. Prashant Agarwal, Member of suspended Board of Bombay Rayon Fashions Limited v. Vikash Parasrampuria, Sole Proprietor of Chiranjilal Yarns Trading and Ors. in Company Appeal (AT) (Ins) No. 690 of 2022 passed by Hon'ble NCLAT Principal Bench on 15.07.2022*
- (ii) *Pavan Enterprises v. Gammon India – Company Appeal (AT) (Insolvency) No. 148 of 2018 passed by the Hon'ble NCLAT, New Delhi on 27.07.2018*

9. The corporate debtor filed written submissions stating that in or around October, 2018, the applicant and corporate debtor entered into verbal agreement to engage in a barter transaction, whereby the applicant agreed to supply 'shrimp' to the corporate debtor against the simultaneous supply of raw materials such as feed/seed to the applicant and/or its group companies by the corporate debtor and/or its group companies. Alternatively, it was agreed that if such barter system was not to be followed for a particular supply transaction, then the corporate debtor and/or its group companies would make such payments to the applicant and/or its group companies. Pursuant to said arrangements the corporate debtor received supply of shrimp from the applicant from time to time for an aggregate value of Rs. 1,08,54,747/-. Apart from the delivery challans, no other documents such as invoices or any other documents were provided by the applicant. During the course of above dealings between the parties, in December, 2018, at the request of the applicant, the respondent made ad hoc payment of Rs. 40,00,000/- against the supply of shrimp. Additionally, the respondent through its group companies i.e. Fine Foods and West Coast Aqua, supplied raw material (feed/seed) to the applicant and its group company, which was duly accepted by the applicant. Thus both the applicant and respondent acted upon the

agreement treating the same as valid and binding. No amount remained due and payable by the respondent to the applicant. The tabular summary provided at page Nos. 112 to 114 of the reply clearly showcases that on the contrary the Fine Foods, i.e. group company of the respondent is entitled to receive a sum of Rs. 1,02,071/- from the applicant for the supply of raw material by it. The applicant for the first time addressed a purported recovery notice dated 10.02.2020 claiming an amount of Rs. 75,88,665/- as due and payable by the respondent to the applicant. There was no claim of interest in the said notice and no invoice was shared with the letter dated 10.02.2020. The respondent replied the notice vide letter dated 03.03.2020 calling upon the applicant to provide detailed particulars of the claims raised in the notice, however, the applicant failed to respond to the letter of the respondent. The applicant issued demand notice dated 07.07.2021 calling upon the respondent to pay a sum of Rs. 1,21,41,864/-. For the first time, the applicant issued thirteen invoices upon the corporate debtor. Nothing with respect to the aforesaid invoices were mentioned in the letter dated 10.02.2020 issued by the applicant. The invoices raised by the applicant are false and fabricated. The 12 invoices annexed to the demand notice were neither stamped nor signed by any authorised personnel of the applicant. Upon direction of the

Adjudicating Authority vide order dated 07.04.2022, legible copies of the invoices were submitted by the applicant vide affidavit dated 27.05.2022. The twelve invoices annexed to the demand notice are completely different set of invoices as compared to the invoices placed with the application. The claim amount and the quantities of goods in both the set of invoices are different and the applicant has failed to put forth any explanation for the same. None of the invoices bear the stamp or signature of the corporate debtor, therefore, it is evident that the said invoices were never served to the corporate debtor. The applicant has not produced any evidence to show that such invoices were ever served upon the corporate debtor before issuance of demand notice. Pursuant to order dated 07.04.2022 to remove the defects in the application, the applicant has furnished copy of eleven invoices with the affidavit. The eleven invoices attached to the affidavit for removal of defects contain the stamp and signature of the applicant only, making it evident that the invoices have been stamped and signed at a later stage. The claim amounts are differing among the three different sets of invoices submitted by the applicant. The claim amount in respect of the invoices placed along with the application adds upto Rs. 66,73,437/-. Against that, the aggregate amount for the eleven invoices placed along with the affidavit for removal of defects

is Rs. 98,91,673/-, whereas the total amount comes to Rs. 1,15,88,665/- if the twelve invoices placed with the demand notice are to be considered. The claim with respect to quantities mentioned in each set of invoices is also contradictory. The quantity of goods as per the invoices annexed to the petition adds upto 14,184 kilograms, whereas, in accordance with the twelve invoices annexed to the demand notice it adds upto 21,844 kilograms. There is no agreement between the parties pertaining to levy of interest amount or penalty charges.

10. Pursuant to order dated 07.04.2022 the corporate debtor filed rebuttal affidavit inter alia stating that the invoices placed with the demand notice are completely different set of invoices as that compared to the invoices placed along with the application for which no explanation is given by the applicant. It is submitted that it appears that after the order of this bench, the purported invoices have been freshly created and thereafter signed and stamped by the applicant. The invoices which are supposed to be computer-generated and in support of which a certificate under Section 65B of the Indian Evidence Act, 1872 is also furnished, do not bear any digital signature and/or electronic stamp.

11. As per part IV, Form 5 total amount of debt is Rs. 1,21,41,864/- (Rupees one crore twenty-one lacs forty-one thousand eight hundred sixty-four only) and date of default is 20.12.2018. The application filed on 23.09.2021 is within limitation and not barred by law.

12. Registered office of the corporate debtor is situated in Surat District, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.

13. Heard submissions and perused the documents on record. On close scrutiny of the two set of invoices filed with the application and filed with the affidavit dated 27.05.2022, it is seen that the applicant has furnished with the affidavit only eleven invoices, whereas, the applicant has furnished copy of twelve invoices with the present application. Total of the said twelve invoices filed with the application comes to Rs. 98,91,673/- and total of 11 invoices filed with the affidavit comes to Rs. 66,73,437/- which in itself is below the threshold of Rs. 1.00 crore for initiating CIRP against the corporate debtor. With reference to applicant's claim that principal plus interest exceeds Rs. 1.00 crore, it is found that the invoices

attached to the application do not stipulate the interest terms. A scanned copy of the invoice is reproduced below for reference:

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INVOICE									
Candida Bio Aqua Solutions SURAT Farmer Name: KHILANBHAI SHAH				Invoice No RM/2018-19/001616		Dated 20-OCT-18			
				PO No. 181923697		Receipt No. : 301006890			
						Lot No. : K133/18			
Consignee WEST COAST FROZEN FOODS PRIVATE LIMITED Plot No. 321,322,323, Unit-1, Orma, Orma Road, Olpad Surat- 394540 INDIA				Location WEST COAST FROZEN FOODS PRIVATE LIMITED Plot No. 321,322,323, Unit-1, Orma, Orma Road, Olpad Surat- 394540 INDIA					
Sl No.	Description of Goods	Type	Basic Rate	Actual Count	Quantity	Rate	UOM	Amount	
1	Head On Black Tiger 39.5 Count	Good	40-360+-5	39.5	1212.000	362.50	KG	439350.00	
				Grand Total				439350.00	
Amount Chargeable (in words) Four lakhs thirty-nine thousand three hundred fifty rupees only									
Remarks: Being Black Tiger Purchase Entered, Lot No.K133 Challan No. 5028 Total Kg 1212 (1212 Kg, Ct. 39.5@40 Ct 360+/-5)									
Supplier's TIN/Sales Tax No. Supplier's VAT TIN 24223100972 Supplier's CST No Supplier's CST No. 24723100972									
								For Candida Bio Aqua Solutions	
								Authorised Signature	

14. The corporate debtor has stated that claim of interest was neither agreed nor was ever paid. In its reply to Section 8 notice dispute is raised and also in its submissions, corporate debtor has referred to dispute regarding cross-claims of sister concern regarding supply of feed/seeds to the applicant. Thus we are supported by the judgement by the Hon'ble Supreme Court in the matter of "Mobilox Innovative Private Limited vz. Kirusa Software Private Limited" (Civil Appeal No. 9405 of 2017), relevant portion of which is reproduced below:

“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under Section 9 (5) (2) (d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the ‘existence’ of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the Adjudicating Authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the ‘dispute’ is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster.

15. It is seen that a suit is filed by the corporate debtor, though after this present application, before Principal Civil Judge, Olpad court on 20.12.2021.

16. Under the facts and circumstances discussed above and as the debt is below threshold, we are of the considered view that the instant application deserves to be rejected. Accordingly, CP (IB) 198/NCLT/AHM/2021 is disposed of.

17. A copy of the order be communicated to the applicant and the corporate debtor. In addition, a copy of the order also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal to forward the compliance report to the Registrar, NCLT.

Sd/-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

Sd/-

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)**

Nair/Abhishek LRA