



SL. No.1

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II**

Hearing Through: VC and Physical (Hybrid) Mode

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 19.02.2025 at 10:30 AM**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	Company Petition (IB) No. 202/9/HDB/2022
NAME OF THE COMPANY	Gold Chick Hatcheries and foods Ltd
NAME OF THE PETITIONER(S)	Noveltech Feeds Pvt Ltd
NAME OF THE RESPONDENT(S)	Gold Chick Hatcheries and foods Ltd
UNDER SECTION	9 OF IBC

ORDER

Orders pronounced, recorded vide separate sheets. In the result, this Petition is dismissed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -II**

CP (IB) No.202/9/HDB/2022

*[Section 9 of the Insolvency & Bankruptcy Code, 2016
read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016]*

**In the matter of M/s.Gold Chick Hatcheries &
Foods Private Limited:**

Regd Office:

M/s.Noveltech Feeds Private Limited,
Nirlon House,
Unit No.22, 5th Floor,
254-B, Dr.Annie Besant Road,
Worli, Mumbai,
Maharashtra.

Corporate Office:

Trendz Hub, H.No.1-89/A/8,
Plot No.8, Gafoor Nagar,
Madhapur, Hyderabad – 500 081.
Formerly M/s.Zuneri Engineering Company,
Having its registered office at 204,
Anukampa, 1st MI Road,
Near Ajmeri Gate,
Jaipur – 302 001,
Rajasthan.

... Petitioner/Operational Creditor

A N D

M/s.Gold Chick Hatcheries & Foods Pvt Ltd.,
Regd Office: No.1-62/151,
Plot No.151 & 27,
1st Floor, Kavuri Hills,
Guttla Begumpet,
Hyderabad – 500 003.

...Respondent/Corporate Debtor



Date of Order: 19.02.2025

Coram:

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)
Sri Sanjay Puri, Hon'ble Member (Technical)

Counsel/Parties present:

For the Petitioner : Mr.N.B.Sudarshan, Learned Counsel
For the Respondent : Mr.Rajgopal, Learned Counsel

P e r: Rajeev Bhardwaj, Member (Judicial)

O R D E R

1. Failing to receive the payment from M/s.Gold Chick Hatcheries & Food Private Limited, (**Respondent/Corporate Debtor/CD**), M/s.Noveltech Feeds Private Limited, (**Petitioner/Operational Creditor/OC**) filed the present Petition under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

Petition

2. The OC deals in the products of poultry feeds and raised invoices as per **Annexure G** and supplied goods through Bills of Supply as in **Annexure H**.
3. The CD did not pay the amount totalling to Rs.1,29,03,363/- and interest of Rs.18,02,845/- @ 24% for the period from 19.09.2021 to 31.03.2022.
4. On the failure of the CD to pay the outstanding amount, the OC served the demand notice dated 24.05.2022, **Annexure F**. Despite the notice, the CD did not pay the amount and the date of default took place on 16.09.2021.



Counter :

5. The CD has not denied about the supply of poultry feeds, but submitted that the notice under Section 8 of IBC was not sent at the registered office of the CD. The notice was also not accompanied by invoices, documents etc.
6. The OC supplied poor quality of feed which resulted in mortality of the birds and consequently farmers suffered losses, thereby directly affecting the business of the CD. This was brought to the notice to the OC, but nothing had happened.
7. The OC has also not filed the interest calculation sheet in both the demand notice and the Petition. The claim of interest amounting to Rs.18,02,845/- is devoid of merits.
8. The principal amount of Rs.2,27,00,973/- has been raised against the bills from 01.04.2020 to 05.01.2021 and therefore hit by Section 10-A of the IBC.
9. We have heard learned counsels for both the parties and have also gone through the entire record.

Findings

10. The absence of a formal agreement between the parties does not negate an inferred contract, as goods were supplied and acknowledged per invoices (**Annexures G & H**). The invoices explicitly specify payment terms and interest on late payments (**Condition No. 1**: 2% interest if payment is not received within one month). Since the parties continued transacting under



these conditions without objection, an inference arises that these terms govern the transactions.

11. Payments were to be made on a bill-to-bill basis, with each invoice having a separate default date. Thus, the petitioner cannot consolidate all invoices into a single default date i.e., 16.09.2021.
12. Section 10-A of the IBC specifically prevents the initiation of insolvency proceedings for defaults committed between March 25, 2020 to March 25, 2021. The legislative intent behind Section 10-A of the Insolvency and Bankruptcy Code (IBC) is clear and unambiguous - CIRP cannot be initiated based on defaults occurring during the specified period of March 25, 2020 to March 25, 2021. This provision was introduced to provide relief to corporate debtors during the economic distress caused by the COVID-19 pandemic. Therefore, any default falling within this period must be excluded when calculating the total outstanding debt. The default in most of the invoices took place during this period.
13. The Hon'ble Supreme Court has explicitly held in ***Ramesh Kymal versus Siemens Gamesa Renewable Power Private Limited (2020) 3 SCC 22***.as how the main provision of Section 10-A is to be interpreted with first proviso and the explanation. We want to refer para Nos. 27, 28 and 29, which are reproduced below:

27. Adopting the construction which has been suggested by the Appellant would defeat the object and intent underlying the insertion of Section 10A. The onset of the Covid-19 pandemic is a cataclysmic event which has serious repercussions on the financial health of corporate enterprises. The Ordinance and the Amending Act enacted by Parliament, adopt 25 March 2020 as the cut-off date. The proviso to Section 10A stipulates that "no application shall ever be filed" for the initiation of the CIRP "for the said default occurring during the said period". The expression "shall ever be filed" is a clear indicator that the intent of the legislature is to bar



the institution of any application for the commencement of the CIRP in respect of a default which has occurred on or after 25 March 2020 for a period of six months, extendable up to one year as notified. The explanation which has been introduced to remove doubts places the matter beyond doubt by clarifying that the statutory provision shall not apply to any default before 25 March 2020.

28. The substantive part of Section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of the CIRP in respect of a corporate debtor for a default occurring on or after 25 March 2020; the embargo remaining in force for a period of six months, extendable to one year. Acceptance of the submission of the Appellant would defeat the very purpose and object underlying the insertion of Section 10A. For, it would leave a whole class of corporate debtors where the default has occurred on or after 25 March 2020 outside the pale of protection because the application was filed before 5 June 2020.

29. We have already clarified that the correct interpretation of Section 10A cannot be merely based on the language of the provision; rather it must take into account the object of the Ordinance and the extraordinary circumstances in which it was promulgated. It must be noted, however, that the retrospective bar on the filing of applications for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the corporate debtor or the right of creditors to recover it.

(own emphasis)

14. Since the amount of bills that became due within the period from March 25, 2020 to March 25, 2021 is to be excluded and therefore, outstanding debt falls below the statutory threshold limit of Rs.1 crore. Consequently, the provisions of Section 9 of the IBC do not apply, and CIRP cannot be initiated against the Corporate Debtor CD based on this claim.
15. The OC has also incorrectly calculated the interest component of the debt. Importantly, the claim for interest was not included in the demand notice (**Annexure F**). According to paragraph 5 of the demand notice, the CD was asked to pay Rs.1,29,03,363/-, which does not include the interest amount now being claimed. Since the demand notice did not explicitly demand interest, it cannot be retrospectively added to the total debt amount.



The absence of a specific claim for interest in the demand notice further weakens the case for CIRP initiation.

16. Another issue which goes to the root of the case is the service of demand notice. The service of demand notice is a crucial procedural requirement under Section 8 of the IBC, read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The OC is required to send the demand notice in either Form 3 or Form 4. In the present case, the notice was sent in Form 3, which details the supporting documents attached to the notice.
17. The notice under Section 5(2) is to be delivered to the CD at either of the following addresses as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016:
 - i. At the registered office by hand, registered post or speed post with acknowledgement due, or
 - ii. By electronic mail service to a whole time director or designated partner or given managerial personnel, if any, of the corporate debtor.
18. Thus, the demand notice must be sent to the registered office of the Corporate Debtor CD or via email to an authorized person, as per Rule 5. Since the OC chose to serve the demand notice at the registered office of the CD via speed post, the key issue is whether the notice was properly delivered as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The OC sent the demand notice dated 24.05.2022 (**Annexure F**) at the following address:

M/s.Gold Chick Hatcheries & Foods Pvt Ltd.,
Classic Apartments, 3rd floor,
Vasanth's Emerald Gardens,
Madhapur, Hyderabad



19. However, the registered address of the CD is:

M/s.Gold Chick Hatcheries & Foods Pvt Ltd.,
Regd Office: No.1-62/151,
Plot No.151 & 27,
1st Floor, Kavuri Hills,
Guttla Begumpet,
Hyderabad – 500 003.

20. The notice was sent to an incorrect address and was returned undelivered with the remark "*no such person at this address*", it means the CD never received proper notice. Non-compliance with Rule 5 is a procedural irregularity that is fatal to the initiation of insolvency proceedings, as it has prevented the CD from responding or raising a valid dispute, which is a crucial right under the IBC framework. This procedural lapses in the service of the demand notice render the application under Section 9 of the IBC defective and non-maintainable.

21. Given the exclusion of default amounts falling within the Section 10-A period, the incorrect calculation and omission of interest in the demand notice, and deficiencies in the service of the notice, the CIRP initiation under Section 9 of the IBC is untenable. The Petition also does not meet the threshold criteria. Therefore, this Petition **No.CP(IB) No.202/9/HDB/2022 is dismissed.**

Sd/-
(Sanjay Puri)
Member(Technical)

Vinod

Sd/-
(Rajeev Bhardwaj)
Member (Judicial)