

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**MA/35/2020 in CP/748/IB/2018**

*(filed under Rule 11 of National Company Law Tribunal Rules, 2016 and other  
Applicable Provisions of the Insolvency and Bankruptcy Code, 2016)*

Along with

**CP/748/IB/2018**

*(filed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016)*

In the matter of **M/s. Juku Orchem Private Limited**

**M/s. DEE Pharma India LLP,**

Plot No.148, Prestige Featherlite Tech Park,

II Phase, EPIP Zone, Whitefield,

Bengaluru – 560 066,

... Applicant /Operational Creditor

-Vs-

**M/s. Juku Orchem Private Limited,**

S-3, Royal Suite, No.14, Saravana Street,

T. Nagar,

Chennai – 600 017.

... Respondent / Corporate Debtor

Order Pronounced on 2<sup>nd</sup> March 2021

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**

**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : Pawan Jhabakh, Advocate*

*For Corporate Debtor : Varuni Mohan, Advocate*

**ORDER**

**Per: R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. MA/35/2020 is an Application filed by M/s. DEE Pharma India LLP against M/s. Juku Orchem Private Limited under Rule 11 of NCLT Rules, 2016 seeking relief as follows: -

a) *That the CP/748/IB/2018 be revived / restored, based on the liberty that had been granted to the Applicant herein, by this Hon'ble Tribunal, by virtue of the order dated 22<sup>nd</sup> April, 2019, in CP/748/IB/2018;*

b) *Pass such other order or orders as Hon'ble Tribunal may deem fit and thus render justice.*

2. In relation to CP/748/IB/2018, it is seen from the records that the Operational Creditor had originally filed CP/748/IB/2018 before this Tribunal on 23.05.2018 and thereafter, a Memorandum of Compromise dated 11.04.2019 was entered into between the parties wherein the Corporate Debtor has agreed to pay a sum of Rs.20,17,740/- to the Operational Creditor in the manner set out in the said Memorandum of Compromise.

3. This Tribunal, by taking into consideration the said Memorandum of Compromise as entered into between the parties vide its order dated 22.04.2019 has passed the following order: -

*"Counsels for both the parties are present, filed Joint Memo of compromise which contains that the details for balance payment, the same is placed on record. In the light of the terms and conditions of the Joint Memo of Compromise, the Petition stands **disposed of**. However, liberty is granted to the Operational Creditor to revive/restore the Petition in the event of the cheque(s) given is / are dishonoured"*

4. Subsequent thereof, the Operational Creditor has filed MA/35/2020 before this Tribunal on 04.11.2019 stating that after the dismissal of the said CP/748/IB/2018, the Corporate Debtor has paid only one instalment amount and the subsequent cheques issued by the Corporate Debtor, in pursuance of the said Memorandum of Compromise as entered into between the parties, when presented before the banker of the Operational Creditor, was returned with an endorsement '*funds insufficient*'.

5. Hence it was submitted by Learned Counsel for Operational Creditor that MA/35/2020 has been filed under Rule 11 of NCLT Rules, 2016 based upon the liberty having been granted to the Operational Creditor vide order dated 22.04.2019 passed by this Tribunal in CP/748/IB/2018 and that the Operational Creditor sought to restore CP/748/IB/2018 on the file of this Tribunal.

6. When the matter came up for hearing on 02.03.2020, Learned Counsel for the Corporate Debtor has sought time to settle the claim amount and this Tribunal while recording the said statement made by the Learned Counsel for the Corporate Debtor has passed the following orders:-

*"Learned Counsel for the parties are present. Counsel for the Petitioner as well as Counsel for the Corporate Debtor seek some more time for the parties to settle the matter as promised by the Corporate Debtor. It is seen from the records*

*of this Tribunal that already a Memo of Compromise has been entered as between the parties on 11.04.2019, pursuant to which, CP/748/IB/2018 has been disposed of with liberty given to the Petitioner. It is also seen that Memo of Compromise has been filed by the parties. In the circumstances, last and final opportunity is given to the Corporate Debtor to settle the claim amount on or before the next date of hearing, failing which, this Tribunal will be constrained to initiate Corporate Insolvency Process (CIRP) as insolvency stands established in view of the non-adherence of the earlier joint memo of compromise filed by the parties, post this matter on **16.03.2020.**"*

7. Subsequently, when the matter came up for hearing on 09.02.2021, Learned Counsel for the Corporate Debtor again sought one more opportunity to settle the matter between the parties. However, by taking into consideration the order passed by this Tribunal on 02.03.2020, this Tribunal was unable to grant any more time to the Corporate Debtor and in the circumstances reserved the matter for order.

8. Thus the failure on the part of the Corporate Debtor in non-adherence of the time schedule as stipulated under the Joint Memo of compromise as entered into between the parties proves that the Corporate Debtor has committed default in payment of the amount due to the Operational Creditor and as such this Tribunal is left with no other option rather than to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

9. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India for the period of January to June 2021, this Tribunal appoints **Mr. V. M. Gurusamy** with Registration No. *IBBI/IPA-003/IP-N00193/2019-2020/12512* (email id:- *vmgurusamy@yahoo.in*) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.

*Explanation.*-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;

23. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

24. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

25. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be



also furnished with copy of this Order forthwith by the Registry,  
who will also communicate the initiation of the CIRP in relation to  
the Corporate Debtor to the Registrar of Companies concerned.

-Sd-

**ANIL KUMAR B**  
MEMBER (TECHNICAL)

-Sd-

**R. VARADHARAJAN**  
MEMBER (JUDICIAL)

*Raymond*