

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.01.2020 AT 10.30 AM

TRANSFER PETITIONNO.	
COMPANY PETITION/APPLICATIONNO.	CP(IB) No. 119/9/HDB/2019
NAME OF THE COMPANY	Adroit Financial Services
NAME OF THE PETITIONER(S)	Sri Yadadri Life sciences Pvt Ltd
NAME OF THE RESPONDENT(S)	Adroit Financial Services
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
C. Shilpa	Adv	9985183500	shilpa

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

The petition is admitted. Orders pronounced vide separate order.


Member (T)


Member (J)

Karim

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

CP (IB) No. 119/9/HDB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of IBC, 2016

In the matter of Yadadri Lifesciences Private Limited

M/s.Adroit Financial Services
501, Sai Bhargavi Residency,
Srinivasa Colony(E)
Ameerpet,
Hyderabad-500 038.

... Petitioner/
Operational Creditor

VERSUS

M/s. Yadadri Life Sciences Private Limited
3rd Floor, Pent House, Deepthi Apartments,
Srinagar Colony,
Madinaguda,
Serlingampally,
Hyderabad-500 050.

... Respondent/
Corporate Debtor

Date of order: 06.01.2020

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narender Kumar Bhola, Member (Technical)

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Parties / counsels present:

For the Petitioner : Ms.Shipa, Counsel.

For the Respondent: Shri. Varun.J, Counsel.

Per: Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Heard on: 19.11.2019.

ORDER

1. The present Petition is filed by Adroit Financial Services (hereinafter referred as Petitioner/ Operational Creditor) against M/s. Yadadri Life Sciences Private Limited (hereinafter referred as Respondent/ Corporate Debtor). The Corporate Debtor had defaulted in paying Rs. 12,98,000/- (Rupees Twelve Lakhs Ninety Eighty Thousand Only). 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 made in the Petition are as follows:
 - a. The operational creditor has its operations since June 2000 in the state of Andhra Pradesh (Now Telangana) and is engaged in the financial services and corporate Law Matters. The operational creditor is in the line of financial consultancy and corporate advisory for capital structuring and settlement of debts through

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OTS as well as contributing for preparation of Resolution Plans under CIRP and filing documents under Corporate Insolvency and Bankruptcy Code, 2016.

- b. It is averred that operational creditor was approached by the corporate debtor in the month of March , 2018. There was an understanding between the operational creditor and corporate debtor for structuring and mobilizing investments for the settlement of OTS with the sole financial creditor i.e SBI.
- c. It is averred that the corporate debtor failed to provide any securities for the purpose of availing the investments/loans before 30th April, 2018 which is required for mobilization of funds to complete the OTS on time.
- d. It is averred that SBI, initiated the auction process under SARFAESI Act on May 1st, 2018. Then the corporate debtor entered into MOU on 2nd May, 2018 for rendering services for advising the company on initiation of corporate insolvency resolution process U/s.10 of the I&B Code, 2016.
- e. It is averred that the operational creditor along with their associate Mr.A.S.Sathish Kumar, PCS for rendering professional services for advising the company on initiation of corporate insolvency and bankruptcy code, 2016 filed an application U/S.10 on 5th MAY, 2018 with NCLT. After completing the pleadings with memos and rejoinders the matter came for admission on 6th September, 2018.
- f. It is averred that operational creditor was requested by the corporate debtor to withdraw the application U/s.10 of the I&B Code, 2016 as the Sole Financial creditor/SBI had offered another opportunity for

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OTS. It is averred that as per request of the corporate debtor, operational creditor filed withdrawal memo and received orders on 6th September, 2018.

- g. It is averred that an invoice was raised to claim for Rs.12,98,000/- (including 18% GST) for professional services on 11th September, 2018. As per the invoices raised the corporate debtor required to pay the amount against the invoice within 30/60 days from the date of receipt of invoice.
- h. It is averred that though the corporate debtor received services failed to pay the invoice amount and thus Form-3 was sent by speed post to the registered office, operations unit, Directors address of the company on January, 2019.
- i. Thus the operational creditor filed the petition Under Section 9 of the Code stating that there is an existence of debt, and there is default. Operational creditor requested the Tribunal to initiate CIRP against corporate debtor.

3. The averments made in Counter/ Reply are as follows:

- a. Respondent denied the allegations made by the petitioner/operational creditor and avers that there is no debt due as claimed by the petitioner and therefore the petition to be dismissed.
- b. On 27th March, 2018 respondent engaged the services of the petitioner to arrange finance for supporting the operations of the Respondent for a professional fee of 3% payable in various tranches as mentioned in the agreement dated May 27th 2018. A copy of the agreement is enclosed as Exhibit A.
- c. It is averred that the Respondent had paid a sum of Rs. 12,00,000/- to the petitioner on various dates as listed in the statement of account. It is averred that despite repeated requests, the petitioner failed to

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provide the services to the respondent, on account of which the respondent failed to meet its commitments to SBI, as it could not honour OTS on more than one occasion and that the respondent was solely dependent on the petitioner for meeting its commitments to SBI.

- d. It is averred that on May 2018 on the advice of the petitioner, the respondent moved an application U/s.10 before this Tribunal for initiating CIRP which was later withdrawn by the respondent on the advice of the petitioner, since SBI offered 2nd chance to the respondent for settling dues through OTS.
- e. It is averred that respondent called upon the petitioner to return the amount of Rs.12lacs which is already paid towards advance owing to non-fulfilment of the terms of agreement dated March 27, 2018.
- f. It is averred that the petitioner raised an invoice dated September 11, 2018 for a sum of Rs.12,98,000/- (Rs.11 lacs plus GST of Rs.1,98,000/-) which was received by the Respondent by speed post on December 31,2018.
- g. It is averred that if the petitioner raised the invoice on September 11, 2018 it would be reflected in the GST Returns filed by the Petitioner for the month of September,2018. Petitioner should file the copy of GST Return filed for the month of September, 2018 which will reveal the truth. Copy of the invoice is enclosed as Exhibit 'C'.
- h. It is averred that the petitioner raised demand notice U/s.8 of the Code calling upon the Respondent to pay a sum of Rs.12,98,000/- for which the Respondent vide its letter dated January 25, 2019 responded by stating that there is no debt due to the petitioner and

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also demanded the refund of balance amount of Rs.1,40,000/-

- i. It is averred that petitioner raised back dated invoice and claiming it as an operational debt, with sole purpose of harassing the respondent by abusing the process of law.
- j. It is averred that the petitioner finally admitted its inability to honour its commitment in terms of the agreement dated March 27, 2018 and after repeated requests petitioner finally agreed to return the amount of Rs.12 lacs to the respondent and in the process returned a sum of Rs.10,60,000/- through bank to the respondent bank account and the petitioner still owes a sum of Rs.1,40,000/- to the respondent for which the respondent is initiating recovery proceedings separately. Therefore in the absence of the operational debt as claimed by the petitioner, the respondent prays the Tribunal to dismiss the application.

4. The Petitioner has filed Rejoinder against the Counter of the Respondent reiterating the averments made in the Petition and denied all the submissions made by the Respondent in the counter. It is stated in the Rejoinder that:

- a. Operational creditor denied the allegations made by the corporate debtor. It is averred that the respondent places reliance and relevance to the agreement dated March 27, 2018 where in the 'Clause-3' of the agreement states that the corporate debtor would provide 200% security to the loan being requested that INR 10 Crores security would be provided for the loan of INR 5 Crores which was not adhered and was not available to be pledged. The time for OTS had expired and the corporate debtor in order to save its assets from the financial creditor

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approached the consultants to file the application under Section 10 with NCLT. A separate agreement was entered into for the same with the corporate debtor by the Applicant on 2nd May 2018 which was not referred by the respondent in his counter.

- b. It is averred that the respondent did not pay Rs.12,00,000/- to the petitioner and there is no cash transaction. The total transferred amount was Rs.9,00,000/- through bank transactions to the petitioner on 29th September 2018 as second OTS availed had an obligation to be met by the corporate debtor who sought the help of the operational creditor for 10.60 Lacs which was transferred from IDBI Bank to the Account of the corporate debtor. Therefore the financial obligation was already there on the Respondent.
- c. It is averred that the respondent despite repeated requests to provide security for the loan availed was not provided as per the agreement in clause 3 of Exhibit-A. The OTS availed for the second time after withdrawal of Section 10 application on 6th September 2018 was also in haste as the investors were insisting for the security of assets or at least shares.
- d. It is averred that financial transaction is not connected to the operational liability and Respondent repeatedly tries to state that the operational liability is not tenable. There is an operational liability by the Respondent as the obligation to pay Rs.11 lacs is exclusive and is mandated as per legal agreement and also accepted to be paid.
- e. It is averred that respondent mentioned about the agreement which was executed for the services offered for initiating CIRP. The agreement clearly

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states that the professional services would be exclusive of any other services or assignments being discussed. The petitioner never advised the Respondent to withdraw the application but it was the company's decision to withdraw the application to avail the OTS offered by the SBI. The invoice was raised only to meet the obligation for services offered to the Respondent in appearing at least 11 hearings.

- f. It is averred that the petitioner never asked for the return of the advances made but was asked to support the 5% payment due by the respondent to the SBI ON 29TH September 2018 for Rs.22 lacs, and availed a gold loan and private loan to meet the obligation of paying the SBI where in the petitioners share obligation is Rs.10.60 lacs.
- g. It is averred that GST will be paid and returns will be submitted once payment is released and the GST is not a contention as the invoice is enough to prove that the services were offered as per the agreement and there is a liability of Rs.11 lacs exclusive of GST.
- h. It is averred that the Exhibit D is false and the cash transactions were never happened. The respondent averred that the petitioner is raising back dated invoice which is false and was not honouring the obligations. There are many criminal and civil matters pending more than 15 courts.
- i. It is averred that the amount advanced by the petitioner was only to help the respondent to meet his obligation under OTS scheme on 29th September and therefore the respondent is obligated to pay Rs.11 lacs as per the agreement dated 2nd MAY 2018 and also to support the company protecting its assets as immunity provided by this Tribunal else the SBI



would have made auction for the assets of the respondent in the month of May/June , 2018 itself.

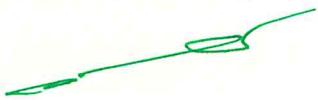
5. We have heard the learned counsel for the operational creditor and the learned counsel for the corporate debtor. Learned counsel for the operational creditor would contend that the corporate debtor had entered into a Memorandum of Understanding (MoU) dated 02.05.2018 for providing NCLT services to the corporate debtor. Learned counsel would contend that accordingly the operational creditor provided services to the corporate debtor and filed a petition under section 10 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for brevity) on behalf of the corporate debtor. The learned counsel would contend that there is absolutely no dispute that the operational creditor extended services to the corporate debtor in filing the application under section 10 of the I&B Code before the NCLT, Hyderabad on behalf of the corporate debtor. In terms of the agreement/ MoU, the corporate debtor was liable to pay the agreed money to the operational creditor for the services rendered. The operational creditor engaged an associate, Shri Satishkumar, a Practising Company Secretary for initiating the process on behalf of the corporate debtor under section 10 of the I&B Code before the NCLT.
6. Learned counsel for the operational creditor further contended that the application filed on behalf of the corporate debtor was numbered as CP(IB) No.301/10/HDB/2018. The learned counsel would contend that State Bank of India, the sole financial creditor had agreed to consider second OTS proposal to be filed on behalf of the corporate debtor provided the corporate debtor to withdraw the application filed under section 10 of the I&B Code. The learned counsel would contend that the application was withdrawn on the advice of the corporate debtor to enable the corporate debtor to move second OTS

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proposal with State Bank of India. The application was dismissed as withdrawn. However, the corporate debtor was unable to pay the amount agreed for rendering services to the corporate debtor. An invoice was raised for the amount and demand notice was also sent to the corporate debtor. Since no payment from the side of the corporate debtor, an application is filed under section 9 of the I&B Code against the corporate debtor to initiate Corporate Insolvency Resolution Process (CIRP). The learned counsel contended that the corporate debtor is raising a dispute for the first time, which is totally unconnected to the agreement dated 02.05.2018.

7. The learned counsel contended that the corporate debtor did not whisper anything in respect of agreement dated 02.05.2018, which was entered into with the operational creditor for extending NCLT services. The learned counsel contended that the corporate debtor is contending as if there is a dispute in respect of an agreement dated 27.03.2018, which was entered in connection with rendering financial services, etc. The obligations arising under the said contract are totally different than the obligation arising under the agreement dated 02.05.2018. Thus, there is no prior dispute as far as the obligation to be discharged by the corporate debtor in respect of the agreement dated 02.05.2018. The learned counsel contended that it is not the case of the corporate debtor that it had paid the fee for the services rendered under agreement dated 02.05.2018. Therefore, there is no prior dispute and the application is liable to be admitted. Regarding GST it will be paid as soon as money is received from the corporate debtor. Thus, the learned counsel contended that the petition is liable to be admitted.
8. On the other hand, the learned counsel for the corporate debtor would contend that it had entered into an agreement with the operational creditor dated 27.03.2018 for arranging

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finance to meet with the liability under OTS and to render other services. The learned counsel would contend that the operational creditor failed to render services as per the agreement dated 27.03.2018. Thus, first OTS proposal could not be materialised. In the meantime, on the advice of the operational creditor, an application under section 10 of the I&B Code was filed. In the meantime, State Bank of India again agreed to receive second OTS proposal subject to the condition that the corporate debtor to withdraw the application filed under section 10 of the I&B Code. Thus, the application under section 10 of the I&B Code was withdrawn.

9. The learned counsel for the corporate debtor contended that the operational creditor failed to provide services to the corporate debtor as per the terms of agreement dated 27.03.2018 and there was payment to the operational creditor, who subsequently repaid, except Rs.1,40,000/-. The learned counsel contended that still the operational creditor is liable to pay Rs.1,40,000/- to the corporate debtor.
10. It is the specific case of the operational creditor that the corporate debtor entered into agreement dated 02.05.2018, for rendering NCLT services. Surprisingly, the corporate debtor is not making any reference to this agreement, which is the basis for the operational creditor to contend that the corporate debtor committed default of operational debt. A sum of Rs. 11 lacs was agreed to be paid to the operational creditor for rendering NCLT services to the corporate debtor. It is not in dispute between the operational creditor and the corporate debtor that an application under section 10 of the I&B Code was filed on behalf of the corporate debtor before the NCLT, Hyderabad. As rightly contended by the learned counsel for the operational creditor it is not the case of the corporate debtor that it had paid the fee agreed for the services rendered by the operational creditor to the

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corporate debtor by filing application under section 10 of the I&B Code.

11. Thus, there is no dispute with regard to filing of application on behalf of the corporate debtor under section 10 of the I&B Code. Admittedly, it is not the case of the corporate debtor that it had paid the agreed fee to the operational creditor. However, the corporate debtor is contending that certain obligations to be discharged in respect of agreement dated 27.03.2018. Said obligations, whatever they may be, have no connection to the obligation discharged under the agreement dated 02.05.2018. The alleged dispute, if any, in respect of agreement dated 27.03.2018 is in no way connected to the services rendered for the corporate debtor under agreement dated 02.05.2018. So, it cannot be said that there is a prior dispute. Secondly, no payment is made to the operational creditor in respect of services rendered for the corporate debtor in filing application under section 10 of the I&B Code through its associate, Shri Satishkumar, Practising Company Secretary.

12. The amount payable to the operational creditor falls under the definition of 'operational debt' as it refers to the payment for the services rendered to the corporate debtor. Secondly, demand notice was issued and there is compliance of provisions of section 9 of the I&B Code. Thus, there is debt and default of operational debt. As such the petition is liable to be admitted.

13. 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 following directions:-

(a) 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,

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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;

- (b) 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.
- (c) 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.
- (d) That the order of moratorium shall have effect from 06.01.2020 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.
- (e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- (f) That this Bench hereby appoints Shri G.Madhusudhan Rao Gonugunta, #71-1215, Flat No.103, Sri Sai Swapna Sampada Apts, Balkampet, Hyderabad-500

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038 Registration No. IBBI/IPA-001/IP-P00181/2017-2018/10360 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

(g) Accordingly, this Petition is admitted.

NK 6.1.2020
NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

R 6.1.2020
RATAKONDA MURALI
MEMBER (JUDICIAL)

Pavani/Karim