

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD

ITEM No. 114
C.P.(IB)/12(MP)2021

Order under Section 9 IBC

IN THE MATTER OF:

Anita Madanpal Singh Sole Proprietor of IGC Petrochem
V/s
Oxyzen Lifeline Retail Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..07/10/2021

Coram:

Dr. Deepti Mukesh, Hon'ble Member(J)
Mr. Virendra Kumar Gupta, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


VIRENDRA KUMAR GUPTA
MEMBER (TECHNICAL)

-sd-
DR. DEEPTI MUKESH
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD**

CP(IB)/12[MP]2021

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

IN THE MATTER OF:

Mrs. Anita Madanpal Singh
(Sole Proprietor-IGC Petrochem)
A-45, Vistara Township, Block-A
AB Road, Mayakhedi
Indore-452007
M.P., India

Applicant

Versus

Oxygen Lifeline Retail Private Limited
168, Scheme No. 78
Part 2 DTR 2168
Vijay Nagar, Indore
M.P. 452010 India

Respondent

**Order Reserved on: 10/09/2021
Order Pronounced on: 07/10/2021**

**Coram: ~~Dr~~ Deepti Mukesh, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)**

Appearance:

Ld. Counsel Mr. Abhinav Dhanokar appeared for the Applicant.

Ld. Counsel Mr. Pratyush Mishra appeared for the Respondent.



ORDER

[Per: Virendra Kumar Gupta, Member (T)]

1. This application has been filed by Mrs. Anita Madanpal Singh, Proprietor of M/s IGC Petrochem, the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **IBC, 2016**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor viz. M/s Oxygen Lifeline Retail Private Limited. The amount of claimed debt in default is Rs.3,67,63,463.80/- (Rupees Three Crore Sixty Seven Lakh Sixty Three Thousand Four Hundred Sixty Three Eighty Paise Only) including interest and the date of default is 21.06.2019.
2. The facts, in brief, are that the Operational Creditor is into a business of supplying medicines and that the Corporate Debtor holds the retail medicine outlets under the name and style of "Arogya Retail" throughout the state of Madhya Pradesh.
3. There were business relations between the Operational Creditor and Corporate Debtor and from time to time Operational Creditor supplied medicines to the Corporate



Debtor and invoices were raised against the supplied medicine during the period from 25.05.2019 to 15.10.2020 amounting to Rs.2,60,13,153/- (Rupees Two Crores Sixty Lakhs Thirteen Thousand One Hundred Fifty Three). The Operational Creditor issued demand notice in form 3 under Section 8(1) of the I.B. Code, 2016 against the Corporate Debtor for the payment of Rs. 3,67,63,463.80/- (Rupees Three Crore Sixty Seven Lakh Sixty Three Thousand Four Hundred Sixty Three Eighty Paise Only) including interest amount of Rs. 1,07,50,310.80/- (Rupees One Crore Seven Lakhs Fifty Thousand Three Hundred Ten And Eighty Paise Only) on 07.03.2021 which was delivered at the registered address of Corporate Debtor by hand delivery and copy of receipt of said notice by Corporate Debtor with stamp and signature is on record. The Corporate Debtor neither paid the debt nor replied to the demand notice.

4. An application filed by the Operational Creditor under section 9 of the Code, Adjudicating Authority vide order dated 16.07.2021 has given time to the Learned Counsel for the Respondent to file a reply within a week and the same was



filed by Corporate Debtor as per our directions dated 16.07.2021.

5. The Corporate Debtor has denied the averments of the Operational Creditor in respect of the amount raised by Operational Creditor in its Demand notice and application. It is further submitted by the Corporate Debtor that goods and medicine supplied by the Operational Creditor has been cancelled because the medicines were not supplied within agreed time/scheduled period. The Corporate Debtor has further submitted that the medicines supplied by Operational Creditor to Corporate Debtor could not be sold to retailers of Corporate Debtor due to such delay in delivery, because of which Corporate Debtor incurred heavy losses, hence Corporate Debtor cancelled the order supplied by Operational Creditor. However, during the course of hearing learned Counsel for Corporate Debtor submitted that a sum of approximately Rupees 2,00,00,000/- or more is due and payable which is less than the amount claimed by the Operational Creditor i.e. Rupees 3,67,63,463.80/- (Rupees Three Crore Sixty Seven Lakh Sixty Three Thousand Four Hundred Sixty Three Eighty Paise Only).



6. It is further noted that the applicant has proposed the name of IRP Mr. Navin Khandelwal (Reg. No. IBBI/IPA-001/IP-P00703/2017-2018/11301), Mr. NavinKhandelwal who has also consented to be appointed as IRP.
7. Heard the Learned Counsel of Operational Creditor and Learned Counsel of Corporate Debtor, and perused the material on record on this basis it is noted that:

A. There is a business relationship between Operational Creditor and Corporate Debtor, and medicines were supplied to the Corporate Debtor as per mutual understanding and on the basis of purchase order raised by Corporate Debtor from time to time. There exists no written agreement. Though it was claimed by the Corporate Debtor in his reply that there were delays in delivery, however, no evidence for such claim has been submitted by the Corporate Debtor. Further Corporate Debtor has not returned the medicines to Operational Creditor which were delivered to it. Also, no evidence in support of claim of losses suffered by Corporate Debtor has been brought



on record. Thus, it is frivolous or spurious defence which has been made to avoid initiation of CIRP. Hence, there is no merit in such claims made by the Corporate Debtor.

B. It is also noticed that there is no pre existing dispute between Operational Creditor and Corporate Debtor, and no reply was sent by Corporate Debtor against the demand notice under section 8 of IBC, 2016 which was served on Corporate Debtor by hand delivery.

C. In the view of facts, it is clear that Corporate Debtor has defaulted in the payment of its debts. On the basis of the facts the application is otherwise defect free & on record. However as far as amount of debt is concerned, the same would be determined by IP/IRP in the course of CIRP of the Corporate Debtor. Hence this claim made by Corporate Debtor is of no consequence before us since admitted amount is also more than the threshold limit for admitting the claim under section 9. So, we admit this application and order



as under:

ORDER

I. The application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (a) *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;*
- (b) *transferring, encumbering, alienating or disposing of by the corporate debtor 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 corporate debtor in respect of its property including any action under the Securitisation 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 corporate debtor.*

II. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency &



Bankruptcy Code, 2016, as the case may be.

III. The Operational Creditor has proposed the name of the Interim Resolution Professional(IRP). Therefore, this Adjudicating Authority hereby appoints **Mr. Navin Khandelwal** having registration no. **IBBI/IPA-001/IP-P00703/2017-2018/11301** to act as an IRP under Section 13(1) (c) of the CODE.

IV. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate. IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

V. This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the CODE.




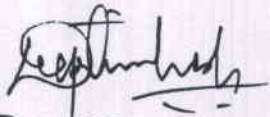
- VI. It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.
- VII. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs. 2,00,000/- (Two Lakh Rupees Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.
- VIII. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate



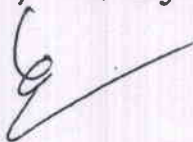
Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

8. Accordingly, CP(IB)/12[MP]2021 is allowed.


Virendra Kumar Gupta
Member (Technical)


Deepti Mukesh
Member (Judicial)

Signed on this, the 7th day of October, 2021.





Certified to be True Copy of the Original


Joint Registrar
NCLT, Ahmedabad Bench
Ahmedabad