

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. (IB) 875/MB/2019

Under Section 8 & 9 of the IBC, 2016

In the matter of

Moditech International

6694, Madanpura, Phase-2, Near
Madanpura Chowk, S.A.S. Nagar, Mohali,
Punjab- 160055

... Petitioner

v/s.

Maestros Mediline Systems Limited

Plot No. EL- 63, Electronic Zone, TTC
Industrial Area, M.I.D.C., Mahape, Navi
Mumbai- 40070

.... Corporate Debtor

Order delivered on: 28.11.2019

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner: Adv. Rajesh Dharap

For the Corporate Debtor: Adv. B. S. Mahajani

Per: Smt. Suchitra Kanuparthi, Member (J)

ORDER

1. This company Petition is filed by Moditech International (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Maestros Mediline Systems Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of ₹1,28,57,534.25/- by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The petition reveals that the Petitioner and Corporate Debtor entered into a Super Distribution Agreement dated 28.11.2012, appointed the Petitioner as Super Distributor for the products manufactured and developed by the Corporate Debtor for three years for super distributorship in Odisha, West Bengal and North Eastern States of medical equipment. The payment terms as captured in the petition are extracted below:

- a. *Maestros will be giving an overriding commission of 7% on 150 lakhs sales per year as minimum commitment; payable on monthly basis. The sales will be through dealer network/ distributor network and also through maestros' sales force.*
 - b. *An additional overriding commission at the rate of 6.5% on actual sales over and above 150 lakhs will be settled and paid at the end of financial year.*
 - c. *Super Distributor shall make the payment in favor of "Maestros Mediline Systems Limited" through account payee cheque only, payable at Navi Mumbai, only after the receipt of the payment from the dealers/ distributors appointed by maestros in different cities/ states if the designated territory; after adjusting the average monthly commission pending as on that date.*
3. As per the terms of agreement, the Petitioner paid super distributor deposit amount of ₹50,00,000/- and the Corporate Debtor was obliged to pay interest at the rate of 10% per annum, the said interest was agreed to be paid quarterly. The agreement construed that the relationship between the parties to the agreement shall be that of vendor and vendee.
4. It was agreed that upon termination of this agreement, Corporate Debtor shall refund the deposit to the Petitioner within 7 working days. In case of delay beyond seven days, the Corporate Debtor shall be liable to pay penal interest @21% per annum from the date of termination of agreement till the date of actual payment.
5. The Petitioner vide an email dated 03.07.2013 claimed amounts under overriding commission of Rajasthan deal, interest on deposit, overriding commission as per Clause 5 and an EMD amount totaling the claim to ₹14,44,166/-. The Corporate Debtor by email dated 10.07.2013 replied as follows:
"Please send me the debit note for the commission and we can make the payment for six months from January to June.
..."
6. The Petitioner has also enclosed an email from the Corporate debtor dated 14.03.2016 wherein the Corporate Debtor stated as follows:
"...

As discussed, please find the following options through which we can start repayment and also start doing business:

Option 1

We have applied for an ECB (External Commercial Borrowing) from HSBC Hong Kong. While more or less the same has been tied up, we will know the schedule by the 18th March 2016. I will let you know of the same and we will issue the payment as per the same and you can encash the same.

Option 2

Having started sales and business, once more we will have surplus funds to be given from June month onwards. We should be able to start repayment from June and close the issue on monthly basis.

Option 3

Along with option 2, you can let me know any material requirement upto 5-7 lakhs per month. We will transfer the same and the same can be adjusted in the outstanding books and accounts.

..."

The content of the email thus confirms the aspect of business between the parties and promise to repay the amount due as on 14.03.2016.

7. The Counsel for the Petitioner has filed a composite claim statement annexed as Exhibit-A containing several heads of claim. He has also issued demand notice under Section 8 of the Code dated 19.12.2018 upon the Corporate Debtor claiming the amount due towards overriding commission, interest on deposit and other amounts totaling to ₹1,28,57,535/- as amounts due under the agreement dated 28.11.2012. The Corporate Debtor replied to the demand notice on 15.01.2019 and claimed that the Petitioner has neglected to perform as per the Subject Agreement, despite the repeated follow ups and that the claim is time barred. At para 4.2 of the reply, the Corporate Debtor categorically mentioned as follows:

"My client states that clause 14 (b) (iii) at page 11 of the said Agreement provides for termination. According to this clause, my client has issued attached Notice of Termination dated 15.01.2019, which has been sent separately to your client. The termination shall come in to effect after 90 days from 15.01.2019, i.e., from 15.04.2019, the said Agreement shall stand terminated and the amount of security deposit of ₹50,00,000/- shall be returned by my client to your client

after the termination takes effect, after making adjustment of amounts recoverable from your client. The copy of Notice of Termination is annexed herewith."

The Corporate Debtor denied the demand of the Petitioner mentioned at serial no. 5, 6 & 7 of the particulars of claim annexed to the petition stating that the said demand is clearly time barred and without prejudice to their rights, they shall settle the claim after adjusting amount recoverable as penalty for non-submission of C-Forms, they denied paying interest at the rate 21% per annum.

8. The Corporate Debtor further reiterated that the demand towards over riding commission at the rate of 7% on the sale of ₹150,00,000/- was denied as baseless and contrary to the provisions of the contract. They further claimed that the Petitioner has never achieved the minimum commitment of sale of products in three years between 2012-2015 and hence rejected the claim of interest towards Over Riding Commission.
9. On 15.01.2019, the Corporate Debtor further issued the notice of termination of contract. The Corporate Debtor filed a reply stating that the claim of the Petitioner is time barred, that there is no default within the ambit of Insolvency Code, they further claim that amount of Security deposit of ₹50,00,000/- was to be returned within a period of 7 days upon termination of the agreement. The Corporate Debtor terminated the agreement only on 15.01.2019. The termination has come into effect after 90 days from 15.01.2019, i.e., from 15.04.2019. Therefore, the amount of security deposit is to be returned after adjusting the amount recoverable from the Petitioner and on submission of C-Forms. The Corporate Debtor also relied upon clause no. 5 of the agreement wherein the Petitioner was obligated to show a sale of ₹150,00,000/- to claim the over riding commission at the rate of 7% on the sale of ₹150,00,000/- per annum.
10. The Corporate Debtor at para no. 21 of the reply confirmed the amounts payable as follows:

"I say that the Code has vested extraordinary jurisdiction upon this Hon'ble Tribunal and therefore, the same ought to be exercised with abundant caution. The petitioner is seeking to abuse the process of law

and use the provisions of the Code as an arm twisting tactic to coerce the Corporate Debtor into making payments of amounts which are to be partly adjusted against the amount recoverable by the Corporate Debtor as well as the partly not due and therefore only Rs.38,89,510/- are payable by the Corporate Debtor to the Petitioner after adjusting Rs.11,10,490.36/-, towards penalty for non-submission of C- Forms by Operational Creditor as well as interest thereof. The Corporate Debtor is ready to pay the said amount to the Operational Creditor within four months from today.”

11. Both the parties were heard, the Petitioner has filed a summary of outstanding claims at Exhibit-A and sought a recovery of several amounts as part of a composite claim, the claim of interest on security deposit given to the Corporate Debtor as per the contract, captured at item no. 5, 6 & 7 of the particular of claims is not denied by the Corporate Debtor and hence, can be awarded as due and payable by the Corporate Debtor. The claim towards over riding commission can not be granted as the same is disputed by the Corporate Debtor, as the Petitioner has not achieved the minimum committed sales of ₹150 Lakhs per year, the Corporate Debtor has confirmed the repayment of security deposit at para 20.0 of the reply. The claim towards the penal interest on failure to refund the security deposit at serial no. 8, 9, 10 & 11 as claimed by the Petitioner can not be awarded as the contract was terminated on 15.01.2019, though the contract stipulates the term of the agreement as 3 years, i.e. from 2012 to 2015, therefore, it can be construed that there is deemed extension of contract till 15.01.2019.
12. In view of the above narration of facts, the Petitioner is entitled to recover amounts due under serial no. 5, 6, 7 of the summary of outstanding claims and serial no. 1 as admitted by the Corporate Debtor at para no. 20 of his reply. Hence, the Corporate Debtor has committed a default of non-payment of all the above amounts and this Petition is liable to be admitted.
13. This Bench having been satisfied with the application filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this application declaring Moratorium with the directions as mentioned below:

- a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the 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 28.11.2019 till the completion of the CIRP 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, as the case may be.
 - e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
 - f) that this Bench hereby appoints Mr. Krishna Deshika, residing at 502, Arjun Apartment, Road 9, Chembur (east), Mumbai - 400071; having Registration No. IBBI/IPA-001/IP-P01333/2018-19/12086 as Interim Resolution Professional to carry the functions as mentioned under the Code.
14. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-
V. Nallasenapathy
Member (Technical)

SD/-
Suchitra Kanuparthi
Member (Judicial)