

**In the National Company Law Tribunal,
"Chandigarh Bench, Chandigarh"
(Exercising the powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.246/Chd/Hry/2018

**Under Section 9 of the Insolvency
& Bankruptcy Code, 2016.**

In the matter of:

Touchlife Pharma Private Limited
having its registered office at
A-22, Vastu Apartments,
Sector 55, Gurgaon – 122003
(Haryana)

And its Office at
G-74, Baani Square, Sector 50,
Gurgaon – 122018 (Haryana)
Through its Managing Director
Shri Prashant Pathak.

....Petitioner-Operational Creditor.

Versus.

Alchemist Hospitals (Gurgaon) Private Limited
having its registered office at House No.18,
Sector 21, Panchkula – 134 112, Haryana,
India.

....Respondent-Corporate Debtor.

Judgment delivered on: 25.01.2019

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the petitioner: Mr.Pradeep Nauharia, Advocate

For the respondent: None.

Per: R.P.Nagrath, Member (Judicial):

Judgment (Oral)

This petition has been filed by Touchlife Pharma Private Limited, a company incorporated under the Companies Act, 1956, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (for short to be

referred here-in-after as the Code) for initiating insolvency resolution process against Alchemist Hospitals (Gurgaon) Private Limited, the respondent-corporate debtor. The petitioner company was incorporated as a company on 04.04.2011 as per the master data of the company at Annexure 2. The petition has been filed by the company through Mr.Prashant Pathak, the Managing Director of the petitioner on the basis of resolution dated 11.06.2018 passed by the petitioner company deciding to initiate the insolvency resolution process against the respondent-corporate debtor under the provisions of the Code and authorised Mr.Prashant Pathak and Smt.Kshama Pathak, Director of the company severally to file the petition and sign and verify the pleadings and to do all the necessary acts in the progress of the case. Copy of the resolution is at Annexure 14. The Board of Directors of the Company has noted that the default in payment of the outstanding amount was against Alchemist Hospital, Sector 53, Saraswati Kunj, D.L.F.Golf Course Road, Gurgaon and now the Alchemist Hospitals Limited, which has demerged subsequently pursuant to the order dated 11.01.2016 passed by the Hon'ble Punjab and Haryana High Court in CP No.145 of 2015, into Alchemist Hospitals (Gurgaon) Private Limited.

2. The application has been filed by the petitioner in Form 5 as prescribed under sub-rule (1) of Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules') and the contents of the application are supported by the affidavit of Mr.Prashant Pathak, Managing Director of the Company.

3. The respondent-corporate debtor was incorporated on 27.11.2014 with the authorised share capital of ₹10,20,00,000/- and paid-up share capital of ₹10,18,00,000/- having its registered office at Panchkula in the State of Haryana. Therefore, the matter falls within the territorial jurisdiction of this Tribunal. The master data of the respondent-corporate debtor was downloaded from the portal of Ministry of Corporate Affairs on 23.07.2018 and the copy of master data is at Annexure-3. Even the latest master data of the respondent-corporate debtor downloaded on 21.12.2018 is attached at Annexure PA2/3 with the documents vide diary No.164, dated 15.01.2019 in compliance with the order dated 20.11.2018 and the address of the respondent-corporate debtor is the same as mentioned in both these documents.

4. The facts of the case, briefly stated, are that the petitioner-operational creditor is engaged in the business of selling medicines, Surgicals, Implants etc. and supplying the same to the respondent-corporate debtor which were duly delivered. The respondent was supplied goods by the petitioner as per the details mentioned in Annexure 4 from 31.12.2014 to 13.05.2015 and the copies of the invoices of the goods delivered are from pages 21 to 46. It is also submitted that the adjustment of various credit notes was also made in the account of respondent being maintained by the petitioner from time to time, the details of which are mentioned in Annexure 4.

5. It is further stated that the corporate debtor had made part payments, the entries of which were made in the running account of corporate debtor being maintained by the petitioner and as on 23.12.2014

there was outstanding amount of ₹3,42,834.20 and by giving deductions towards the credit note on 19.09.2015 to the tune of ₹27,321.11, the outstanding amount as on 23.12.2014 was ₹3,15,513.09 and thereafter certain more supplies were made to the respondent-corporate debtor from 31.12.2014 to 31.05.2015. It was stated that the last payment was made by the respondent-corporate debtor to the tune of ₹2 lacs on 05.07.2016. There is thus the outstanding balance of ₹6,74,310.36 as per the entries made in the books of account of the petitioner. Copy of the ledger account of respondent being maintained by the petitioner is at Annexure 5.

6. Thereafter the petitioner sent a demand notice in Form 3 and 4 dated 20.06.2018, which are at Annexure 7 and 8 respectively as prescribed under Rule 5 (1) of the Rules by attaching statement of the details of unpaid invoices. Demand notice was sent to the respondent by speed post on 10.07.2018 as per the postal receipt at Annexure 9. It was received with the report purported to have been made by the postal employee that the corporate debtor refused to accept the notice. It is submitted by learned counsel for the petitioner that the demand notice was sent at the registered office address as reflected in the master data of the respondent. In view of the above, we would observe that there was valid delivery of the demand notice.

7. It is also the version of petitioner that the copy of demand notice with documents was also sent at the e-mail address of respondent-corporate debtor as available on the master data of the respondent-corporate debtor and also to others and copy of e-mail dated 14.07.2018 is at Annexure 10. The learned counsel for the petitioner further submits that

the other e-mail sent at the sanjay.gupta1@alchemisthospitals.com is at page 127 of the paper book who is Chief Financial Officer of the corporate debtor and therefore, he is the key managerial person of the company.

8. It is further stated that the petitioner did not receive any payment or any notice of dispute for which the affidavit of the authorised representative of the petitioner is at Annexure 13 of the paper book.

9. Notice of this petition was issued to the respondent-corporate debtor to show cause as to why this petition be not admitted. When the matter was listed on 11.10.2018, the following order was passed:

“ As per office report, the petitioner has filed the affidavit of service vide diary No.3874, dated 09.10.2018. The notice was sent at the registered office of the company, but the tracking report at page 7 of the affidavit shows that at the time when delivery was attempted, the addressee has moved and the final report dated 18.09.2018 is, item not delivered as unclaimed. Along with this affidavit, the petitioner has also filed a copy of the e-mail dated 19.09.2018, by which the copy of notice was also sent. It is stated that the email was delivered and it did not bounce back.

The learned counsel for the petitioner has also handed over the original envelope containing the notice and the copy of the petition, which has been received back by the petitioner with the report purported to be made by the postal employee that the item was not accepted on the ground that it pertains to Gurugram. The learned counsel for the petitioner refers to the master data of the respondent company at page 19 of the paper book showing the registered office of the company which is the

one, at which the notice was sent. The e-mail was also sent at the e-mail address of the corporate debtor available on the master data of the corporate debtor.

The learned counsel for the petitioner also refers to the previous order dated 30.08.2018 in which it was observed that the advance copy sent to the respondent-corporate debtor by registered post was returned undelivered with the report that the addressee refused to accept the delivery. We, therefore, declare the respondent to be duly served, but there is no representation from the respondent.”

10. When the matter was listed on 20.11.2018, the petitioner was directed to place on record the master data of the demerged company as well as the certified copy of the order passed by the Hon'ble Punjab and Haryana High Court. The copy of the order of Hon'ble Punjab and Haryana High Court sanctioning the Scheme of Arrangement (Annexure 15), did not mention the memo of parties. In compliance thereto the petitioner has filed affidavit vide diary No.164, dated 15.01.2019 alongwith the master data of Alchemist Limited as well as that of respondent-corporate debtor which are at Annexure PA2/2 and PA2/3 and also the copy of order passed by the Hon'ble Punjab and Haryana High Court in Company Petition No.145 of 2015 connected with Company Petition No.71 of 2015.

11. We have heard the learned counsel for the petitioner and carefully perused the record.

12. Before divulging the issues on merits, we would refer to the order dated 11.01.2016 passed by the Hon'ble Punjab and Haryana High Court in a petition seeking sanction of the Scheme of Arrangement by which

the Demerged Undertaking i.e. Hospital situated at Sector 53, Saraswati Kunj, DLF Golf Course Road, Gurgaon of Transferor/Demerged/Petitioner No.1 company, which was Alchemist Limited was sought to be demerged into Alchemist Hospitals (Gurgaon) Private Limited i.e. Transferee/Resulting/petitioner No.2 company. It was observed in the order of the Hon'ble High Court that the assets and liabilities of the "Demerged Undertaking" i.e. Hospital situated at Sector 53, Saraswati Kunj, DLF Golf Course Road, Gurgaon shall be demerged in Transferee Company namely the respondent herein. There was some outstanding amount already pending liability, but as per the scheme, all the liabilities would transfer on the appointed date i.e. 01.04.2014 to the resulting company.

13. The petitioner, having validly served the demand notice, has filed the instant petition in the prescribed Form against the respondent-corporate debtor and thereby fulfilling the requirements of sub-sections (1) and (2) of Section 9 of the Code.

14. Section 9 (3) of the Code reads as under:-

"The operational creditor shall, along with the application furnish—

- (a) *a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;*
- (b) *an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;*
- (c) *a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;*

- (d) *a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and*
- (e) *any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.”*

15. The petitioner has filed the copies of the invoices demanding payment from the respondent in respect of the delivery of goods supplied by the petitioner, which were delivered to the respondent-corporate debtor, as already observed, thereby complying with Section (3) of Section 9 of the Code.

16. Mr.Prashant Pathak, Managing Director duly authorised by the petitioner has filed the affidavit dated 03.08.2018 (Annexure 13) stating that the corporate debtor has neither disputed the existence of or the amount of unpaid operational debt nor provided the details of the pendency of the suit or arbitration proceedings in relation to any such dispute filed. It is further stated that there is no notice given by the corporate debtor in relation to a dispute of unpaid operational debt. The petitioner has satisfied the requirement of clause (b) of Section 9 (3) of the Code.

17. The petitioner has filed the certificate from Canara Bank, where it is maintaining its account and credits are being received from the corporate debtor, certifying that no amount has been received/credited from the period 20.06.2018 to 27.07.2018, when the certificate was issued. Apart from that the petitioner has also filed a copy of the bank statement from 26.06.2018 onwards. The petitioner, therefore, has complied with the requirement of Section (c) of Section 9 (3) of the Code.

18. In this case, the petitioner has also claimed interest at the rate of 24% as mentioned in the invoices, otherwise there is no agreement between the parties with regard to the payment of interest. So, while admitting the petition for the default of the principal sum of ₹6,74,310.36, the petitioner is held entitled to interest at the rate of simple interest at the rate of 10% per annum over the balance amount w.e.f. 01.02.2016 as the last payment was made in the month of January, 2016 and in case the petitioner claims higher rate of interest, the petitioner would be at liberty to raise the claim before the Civil Court.

19. The petitioner being the operational creditor is not obliged to propose the name of the Resolution Professional to be appointed as the Interim Resolution Professional by this Tribunal. Therefore, the Tribunal has to proceed in terms of clause (a) of Section 16 (3) of the Code in case the petition is admitted.

20. In view of the above, all the requirement of Clause (i) of Section 9 (5) of the Code stand fulfilled. The petition is, therefore, admitted under Section 9 of the Code. The matter be now listed on 31.01.2019 for passing of the formal order of declaring moratorium and appointment of the Interim Resolution Professional.

Copy of this order be communicated to both the parties.

Sd/-

(Pradeep R.Sethi)
Member (Technical)

January 25, 2019.
Ashwani

Sd/-

(Justice R.P.Nagrath)
Member (Judicial)