

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

C.P. (I.B) No. 800/MB/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Rajdeep Cans Private Limited

Having its registered address at
Plot No. 8, Dewan & Shah Udhyog Nagar,
ChintuPada Road, Palghar- 401404

.....Operational Creditor/Applicant

Vs

Vivacious Pharmatex Private Limited

Having its registered address at K-36,
Additional Ambernath MIDC, Ambernath East,
Thane-421501

.....Corporate Debtor/Respondent

Order Dated:17.05.2024

Coram:

MADHU SINHA
MEMBER (TECHNICAL)

REETA KOHLI
MEMBER (JUDICIAL)

Appearances:

For the Operational Creditor: Adv. Neelam Morey(PH)

For the Corporate Debtor: None present

ORDER

1. This Company Petition is filed by **Rajdeep Cans Private Limited** (hereinafter referred as “**the Operational Creditor/Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Vivacious Pharmatex Private Limited** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs. 3,36,323.48/-** which includes interest @ 18% from a period of 11.08.17 to 10.02.2020. The date of default is stated to be 11.08.2017. Demand Notice dated 7.05.2019 was served upon the Corporate Debtor and the same was not replied neither any payment was made by the Corporate Debtor.

Brief Facts: -

2. The Petition reveals that the Operational Creditor is a manufacturer of tins. The Corporate Debtor had placed order of different type of tins to be supplied by the Operational Creditor.
3. It is the case of the Operational Creditor that pursuant to the said order tins were supplied to the Corporate Debtor in perfect condition without any defects and invoice No. GST 44 dated 12.07.2017 for an amount of Rs.3,36,323.48/- was raised upon the Corporate Debtor.
4. It is further submitted that another invoice No. GST 14 was also raised upon the Corporate Debtor for a separate order. Post the issuance of the

invoices the Corporate Debtor failed to make the payments and also failed to respond to Operational Creditor.

5. It is submitted that further the Operational Creditor was constrained to issue Demand notice dated 7.05.2019 under section 8 of the Code for both the invoices. The notice was duly served upon the Respondent but the Respondent failed to respond to said notice neither payment was made to the Operational Creditor. Hence the present petition.
6. Further, notice is served upon the Respondent. Despite service none appeared on behalf of the Respondent and nor any reply was submitted. Hence on 01.01.2024 the court considered it appropriate to proceed ex parte and adjourned the case to 05.01.2024 for the counsel to conclude his argument.

Findings/ Conclusion

In view of the fact that despite service the respondent has neither appeared nor advanced any arguments, the court is left with no other option but to accept the contentions of the petitioner as true and correct. Thus upon thorough consideration of the arguments presented by Operational Creditor, as well as a review of the provided records, the following key points have emerged-

7. The case of the petitioner is that the Corporate Debtor had placed an order for different type of tins upon the Operational Creditor who is manufacturer of tins. In terms of the order placed the goods were supplied and delivered to the Corporate Debtor and the invoices was raised on the Corporate Debtor. None of the goods were ever returned back to the petitioner with no defect.

8. In view of the fact that the goods supplied were in perfect condition and delivered to the Corporate Debtor, invoices dated 12.07.2017 were raised upon the Respondent which was not paid. Hence statutory notice under section 8 was served to the Respondent on 07.05.2019, but the Corporate Debtor failed to reply to the same and neither paid the amount due.

9. Hence, the petitioner was constrained to approach this Hon'ble Tribunal for initiation of CIRP against the Corporate Debtor. The case of the Petitioner is that total amount of default with interest at the rate of 18% is Rs.3,36,323.48/-. The date of default is stated to be 11.08.2017. On perusal of the copy of the invoices shows that the invoice dated 12.07.2017 and due before for payment as 30 days meaning thereby the amount falls due and in default from 11.08.2017. Hence, the date of default stands proved. The invoices also refer to 18% interest in terms mentioned at the bottom of the documents. It is after adding interest at the rate of 18 %. The petitioner has approached the Court for the default of amount. The said invoice is reproduced as under-

11. During the course of argument none appeared for the Respondent even after notice was issued by the Hon'ble Tribunal and the same was duly served upon the Respondent. Ultimately vide order dated 01.01.2024 and the Tribunal was constrained to proceed ex-parte against the Respondent. In the absence of the Counsel for Respondent the Tribunal was left with no other option but to accept the submissions of the learned counsel of the Petitioner.
12. On appreciating the submissions made by the Counsel for the Petitioner, the bench is of the opinion that it is case where an amount of Rs.3,36,323.48/-is due from the Respondent which is duly payable to the petitioner. In view of the fact that the said amount has not been paid. The Present petition has been filed.
13. As has been stated above there has been no contradiction to the submissions made by the counsel of the petitioner, in view of no contrary facts available on record the bench is left with no other option but to take the statements/ documents of the petitioner as correct. Additionally, the fact that even after service of notice by the Hon'ble Tribunal, if the Corporate Debtor has chosen not to be present. This Tribunal is bound to accept that all the documents and arguments by the Operational Creditor to be correct. Thus, this Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code. The Bench has relied on law laid down by NCLAT in Company Appeal in the matter of Jeevan Birje Parashram Vs. Kamal Metal Corporation & Anr. (AT) (Ins) No. 1007 of 2023 & I.A. No. 3439 of 2023 wherein it was held as under-

“As observed above, the Appellant did not appear before the Adjudicating Authority inspite of several opportunities and inspite of specific notice given to him to appear before the Adjudicating Authority, counsel appeared and took time to file reply and did not file reply. We are of the view that on such conduct of the Corporate Debtor this Appellate Tribunal is inclined to proceed ex-parte”

Therefore, after considering and perusing the facts and circumstances of the present case, we are of the considered view that the Petitioner has been able to establish that there is an existence of “**operational debt**” which was due & payable and there is a “**default**” committed by the Corporate Debtor.

14. Accordingly, the above Company Petition is ‘**admitted**’ with the following:

ORDER

- a. The above Company Petition No. 800/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Vivacious Pharmatex Private Limited.
- b. Mr. Vakati Balasubramanyam Reddy, having registration No IBBI/IPA-001/IP- P00662/2017- 2018/11131, having email Id- vbsreddy7@gmail.com, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process as mentioned under the Insolvency & Bankruptcy Code, 2016.

- c. The Operational Creditor shall deposit an amount of Rs. 50,000/- towards the initial CIRP costs by way of a Demand Draft drawn in favor of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this 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, 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 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.
- e. 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.
- f. 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.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order 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, as the case may be.

- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.
- k. Accordingly, CP 800 of 2020 is admitted.

SD/-

Madhu Sinha

Member (Technical)

/Aakansha/

SD/-

Reeta Kohli

Member (Judicial)