

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P. (I.B) No.804/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 24.06.2020**

Name of the Company: BDH Industries Ltd
V/s
Mars Remedies Pvt Ltd

Section : Section 7 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER
(through video conferencing)

Learned lawyer, Mr. Pavan S Godiawala is present for the Respondent.

The Order is pronounced in the open court vide separate sheet.


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 24th day of June, 2020


MANORAMA KUMARI
MEMBER JUDICIAL

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

CP (IB)No.804/7/NCLT/AHM/2019

In the matter of:

BDH Industries Limited

Nair Baug, Akurli Road
Kandivli (East)
Mumbai-400 101
Maharashtra

..... Petitioner
(Financial Creditor)

Versus

Mars Remedies Private Limited

635, G.I.D.C. Estate
Waghodia-391 760
Gujarat

..... Respondent
(Corporate Debtor)

Order delivered on 24th June, 2020.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

And

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

FCA, Mr. Kairav Trivedi, for the Petitioner-Financial Creditor.

Advocate, Mr. Pavan S. Godiawala, for the Respondent-Corporate Debtor.

ORDER

[Per: Mr. Chockalingam Thirunavukkarasu, Member (T)]

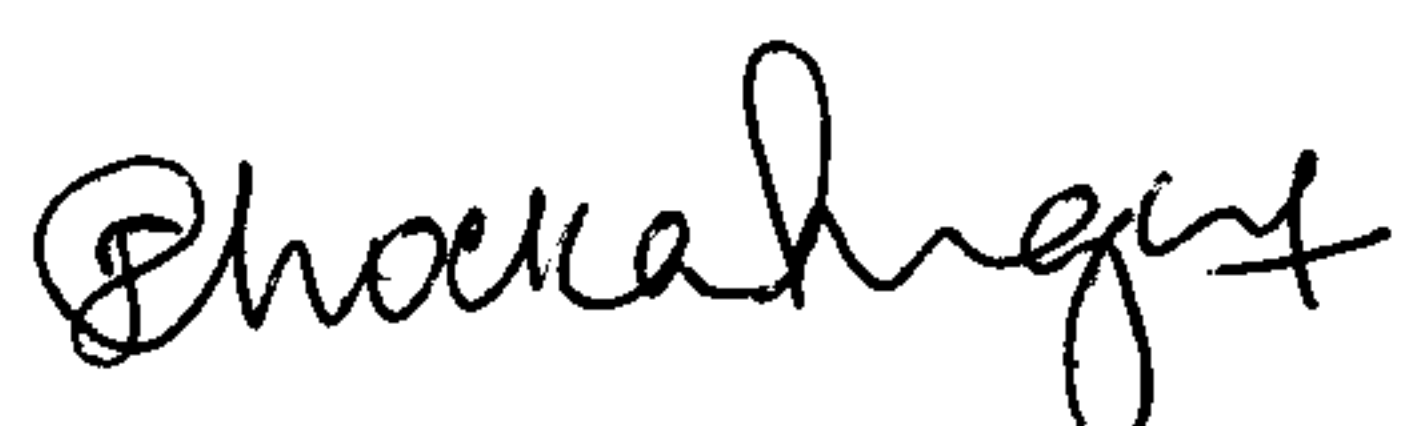
1. The present Company Petition is filed by M/s. BDH Industries Limited (hereinafter referred to as the Petitioner), through its Company Secretary, Ms. Nikita Phatak, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as I & B Code) read with Rule 4 of the Insolvency and Bankruptcy

Chockalingam

11/06/20

(Application to Adjudicating Authority) Rules, 2016 ["Adjudication Rules" for short] for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s.Mars Remedies Private Limited**, the Corporate Debtor.

2. The Corporate Debtor, viz., M/s. Mars Remedies Private Limited, incorporated on 05.11.1999, under the provisions of the Companies Act, 1956, CIN : U24231GJ1999PTC036869, and its registered office is situated at Waghodia, Gujarat. It is engaged in the business of manufacturing of Pharmaceutical Formulations. The Authorised Share Capital is Rs.4,50,00,000 and the Paid Up Share Capital is Rs.4,50,00,000.
3. The Petitioner, M/s. BDH Industries Ltd., a company incorporated on 05.12.1990, under the provisions of the Companies Act, 1956, (CIN: L24100MH1990PLC059299) and engaged in the business of manufacturing of Drugs and Pharmaceuticals and also engaged in exports of its own products and also acts as a Merchant Exporter and is recognized as an Export House.
4. The facts, that are necessary for disposal of the present IB Petition, are as follows:
 - 4.1 The Petitioner stated that the Corporate Debtor company approached it and requested to provide finance for the procurement of raw materials and other items required for the purpose of manufacturing and to export the products.
 - 4.2 It is further stated that a Memorandum of Understanding (MoU) was entered between the Corporate Debtor through its Director Mr. M.Y. Karbhari and Petitioner company





through its Director Mr. S.C. Kachhara, on 7th December 2011. The said MoU has been annexed with the present IB Petition at page No. 25.

- 4.3 It is further stated the petitioner agreed to provide the necessary finance for procurement of raw materials and other items on interest as mutually acceptable rates as per the terms and conditions of the MoU.
- 4.4 It is further stated that as per MoU, the petitioner would make the payment of raw materials and packing materials only after the same have been delivered to the corporate debtor.
- 4.5 It is further stated that based on the MoU, the funding was done since 2011.
5. As per Part IV of the application, the total amount of debt sanctioned by the Petitioner, on various dates from 2011 to 2017, to the Corporate Debtor is Rs.109.50 lakhs. The total amount claimed in default as on 30.06.2019 is Rs.84,93,282/- (Rupees Eighty Four Lakhs Ninety Three Thousand Two Hundred Eighty Two only). The date of default is 30.06.2019.
6. In support of proof of transactions, entered from 28th December 2011 to 30.06.2019, copy of the ledger account as maintained by the petitioner, annexed as Exhibit No.51 to 59 with the present company petition.
7. The Petitioner submits that, in spite of repeated demands, respondent-corporate debtor and its directors/guarantors have failed to pay the outstanding amount to the petitioner-financial creditor, even after notice of demand has been issued. It is

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Sharma

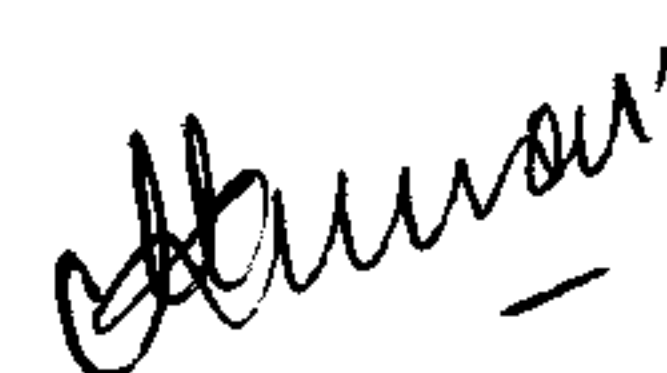
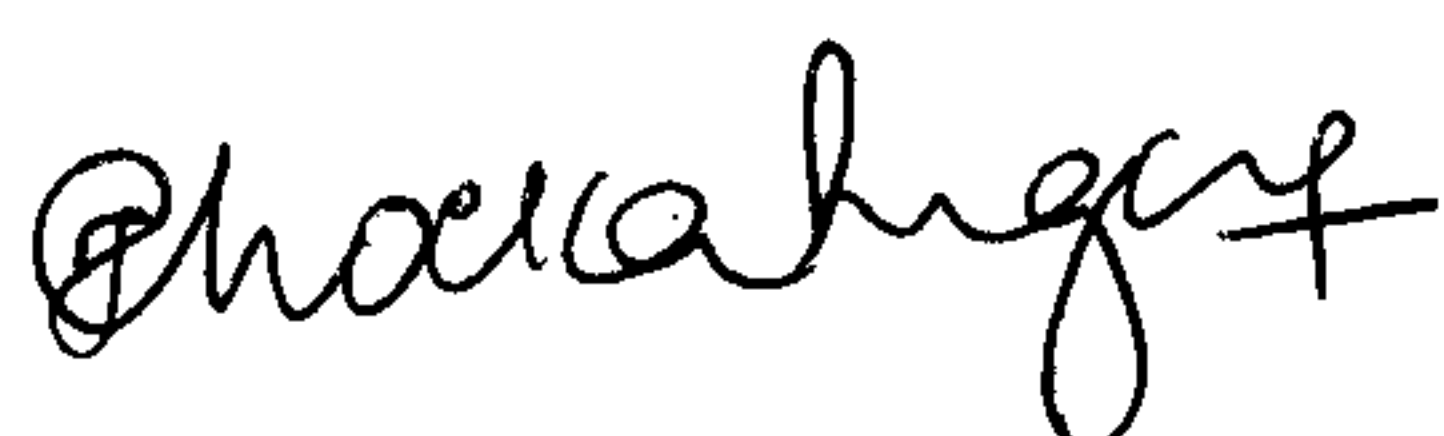
further stated that there is no pre-existing dispute between the parties.

8. On being notice issued to the Corporate Debtor, in respect of the present IB Petition, the Corporate Debtor company caused appearance, through its Counsel, but did not file its reply, despite sufficient opportunities given. Hence, the right to file reply was closed on 27.01.2020.
9. However, liberty was given to the parties for filing written submission. The corporate debtor, through its learned counsel, filed written submission.
10. During the course of argument, the counsel for the respondent has contended that the petitioner is not a financial creditor as per the terms and conditions of the MoU. Clause-1 of the MoU demonstrate the business relations and there is no question of relation of Financial Creditor and clause-2 speaks about the receipt and execution of export order. He further contended that the present petition is not maintainable under the provisions of Section 7 of the Insolvency and Bankruptcy Code, 2016. Hence, the present petition is required to be dismissed with costs.
11. In the light of above given facts and circumstances of the present case, we examined the merits and admissibility of the present IB Petition, under the discipline of the Insolvency and Bankruptcy Code, so as to find it complete or otherwise.

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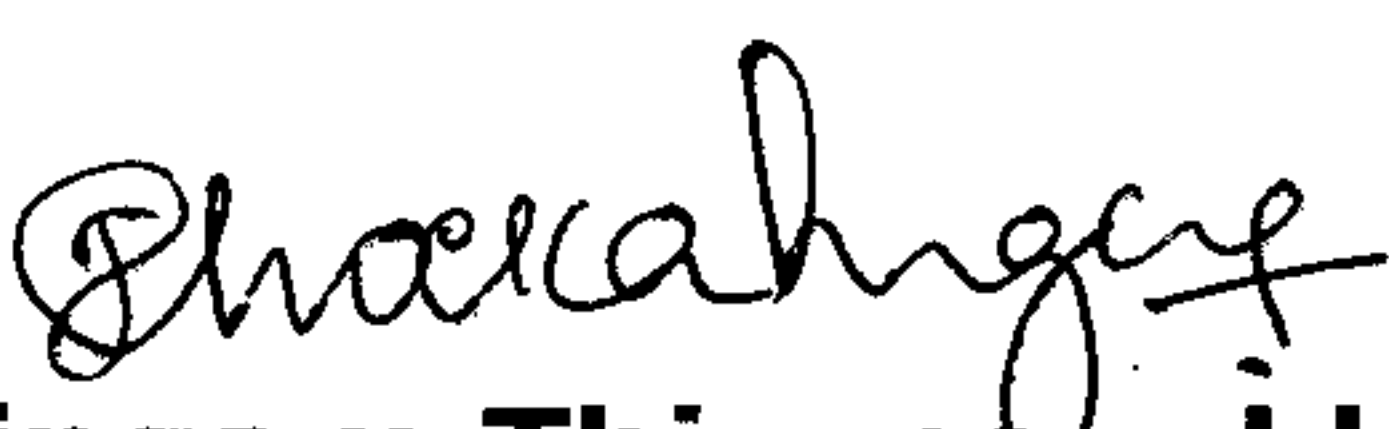
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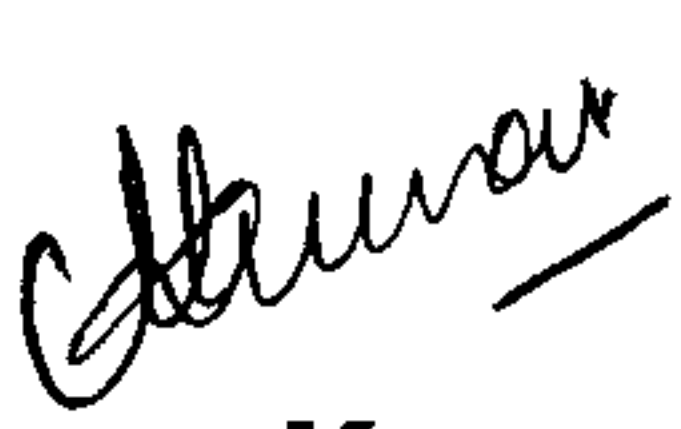
12. Heard the learned FCA for the Petitioner-Financial Creditor and learned Counsel for the Respondent-Corporate Debtor and also gone through the records of the present case.
13. The petition is filed by Ms. Nikita Phatak, Company Secretary of the Petitioner Company. Necessary authorization papers have been filed in support of the same.
14. The main contention of the respondent is that the petitioner is not a financial creditor and, hence, not eligible to file the present petition under Section 7 of the I & B Code.
15. The learned counsel for petitioner has argued that the financial assistance is for upgrading and WHO GMP certification of the respondent. The respondent has also acknowledged the receipt of advance and sought extension of time for repayment of advance.
16. The amount advanced to the respondent is based on the MoU executed between the parties on 07.12.2011. As per MoU, the petitioner will help the Respondent in securing and execution of export orders. In return, the MoU also provides for adjustment of advance and sharing of profits by the petitioner as a percentage on gross value of export orders for different categories of export order. The MoU is in nature of business co-operation agreement. Hence, the money advanced by the petitioner to the respondent does not fall within the definition of 'financial debt' as defined under sub-section 8 of Section 5 of the I & B Code and, hence, the petitioner cannot be treated as a financial creditor as per Section 5(7) of the I&B Code. Under Section 7 of the I & B Code,



“A financial creditor either by itself or jointly with [other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government] may file an application for initiating corporate insolvency resolution process against the corporate debtor before the Adjudicating Authority when a default has occurred”. Therefore, the petition filed under Section 7 of the I & B Code, by the petitioner, is not maintainable.

17. For the reasons stated above, this Adjudicating Authority is of the view that the present petition does not qualify for admission under Section 7 of the I & B Code. Therefore, the same is liable to be rejected.
18. In view of the above, the present IB Petition, i.e. CP (IB) No. 804/7/NCLT/AHM/2019 is rejected. No order as to costs.
19. It is made clear that the observation made in this order will not come in the way of the petitioner in seeking remedy before any other forum.
20. The Registry is directed to communicate a copy of this order to the Petitioner as well as Respondent.


Chockalingam Thirunavukkarasu
Adjudicating Authority &
Member (Technical)


Manorama Kumari
Adjudicating Authority &
Member (Judicial)