



**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.233/Chd/HP/2019

Under Section 7, of the IBC 2016

In the matter of:

Syndicate Bank

having its head office

at Maniwal in the State of Karnataka

Branch at 26, Shakespeare Sarani, P.S. Shakespeare Sarani

Kolkata-700071

Know as Syndicate Bank, Camac Street Branch, Kolkata

.....Petitioner-Financial Creditor

Vs.

Venus Biosciences Private Limited

having its Regd. Office at

116, EPIP Phase-1, Village-Jharmajri, Baddi,

District-Solan, Himachal Pradesh-173205

CIN: U74999HP2008PTC031161

.....Respondent-Corporate Debtor

Judgment delivered on: 18 .04.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Petitioner/Financial Creditor : Mr. Ajaypal Singh, Advocate

For the Respondent/Corporate Debtor : Mr. Viren Sharma, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)



JUDGMENT

The present petition has been filed by Syndicate Bank (hereinafter referred to as 'Petitioner/Financial Creditor') through its Chief Manager, Mr. Bansi Gopal Pujari, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against Venus Biosciences Private Limited (hereinafter referred to as 'Respondent/Corporate Debtor'). The petition is signed by Mr. Bansi Gopal Pujari, with the affidavit verifying the contents of the application appended thereto.

2. The Corporate Debtor is stated to be incorporated on 12.07.2008. The company has its registered address at 116, EPIP Phase-1, Village-Jharmajri, Baddi, District-Solan, Himachal Pradesh-173205. Therefore, the jurisdiction lies with this Bench of the Tribunal. The master data of the corporate debtor is stated to be filed as Exhibit B of the petition.

3. Brief facts of the case are that the main object of the Financial Creditor is to grant commercial, personal, and business loans, credit facilities against interest, mortgages, bonds, and/or any other securities or based upon all or any of the assets or property of the company or without any such security, etc., in pursuance to the law for the time being in force under the law of the land and also to take the deposit of monies against interest. The Corporate Debtor is engaged in the business of manufacturing and producing all kinds of medicines having its factory unit in the state of West Bengal and outside West Bengal. The Corporate Debtors, sometime in the year 2016, approached the Financial Creditor through its directors Mr. Raghu Raghav Balasaria and Mrs. Pragya Balasaria with a request



for renewal of the Overdraft facility already enjoyed by the Corporate Debtor. The Directors of the Corporate Debtor had made the representation that the Corporate Debtor has great potential and business stability. Relying and believing upon the representation made, the Financial Creditor agreed to sanction and sanctioned the aforesaid facility to the Corporate Debtor. The parties entered into various agreements on 26.12.2016 and executed the composite hypothecation agreement, agreement to mortgage, omnibus counter-guarantee, charge, and hypothecation for book debts agreement, guarantee agreement, etc., and also executed the mortgaged documents. The company passed board resolutions and necessary documents in favour of the financial creditor. The Corporate Debtor thereafter breached fundamental provisions of the Agreement by not performing obligation thereunder. Corporate having outstanding dues, the Debtor chose not to repay. The Corporate Debtor duly acknowledged liabilities dues under the account, distinctly demonstrating the Corporate Debtor did not have the intention to honor collective several contractual commitments recorded in the agreements. In the light of the foregoing facts and circumstances, the corporate debtor became liable and is liable to make payment to the tune of Rs.4332.35 lakhs to the financial creditor with interest thereon and from 1st August 2018.

4. It is stated in Part-IV of Form No.1, the total amount claimed to be in default is Rs.4332.35 Lakhs (Rupees Forty-Three Crores Thirty-Two Lakhs Thirty-Five Thousand Only) (with interest up to 31.07.2018 and an overdraft facility of Rs.35,00,00,000/- was sanctioned on 30.03.2015 by the financial creditor and it was agreed that the said facility will be repaid with interest @ BR+3% i.e.13.25%) and date of default is 01.05.2017, i.e., when the account was declared Non-Performing Asset (NPA). Copy of computation of claim as on 31.07.2018



(Exhibit C), Sanction letters (Exhibit D, AK & AI), Board Resolution (Exhibit E), Composite Hypothecation Agreements and Omnibus Counter Guarantee Agreement dated 06.04.2015 (Exhibits F, AM & G), Hypothecation of Debts Agreement (Exhibit I), Guarantee Agreements (Exhibits P, Q, AV, AW & AX), Agreements of Mortgage (Exhibits R & S), Confirmation of Deposit of Title Deeds of properties (Exhibits V, W, AB, AY, BD, BJ), Indenture of Lease (Exhibits Y), Lease Deeds dated 30.07.2005 (Exhibit AC), Board Resolutions (Exhibits AD, AE, AF, AJ, AL, AG, AZ & BA) and Charge and Hypothecation of Debts agreements dated 26.12.2016 (Exhibit AP) are attached with the main petition.

5. The notice of this petition was issued to the respondent corporate debtor vide order dated 05.08.2019 to show cause as to why this petition be not admitted. The Affidavits of service were filed vide Diary No. 3725 dated 29.07.2019 and Diary No.4025 dated 13.08.2019. A reply has been filed vide Diary No.6044 Dated 01.11.2019. The rejoinder has been filed vide Diary No.1019 dated 06.02.2020. The short written synopsis has been filed by learned counsel for the petitioner vide diary No.00451/2 dated 25.01.2023.

6. We have heard the learned counsel for the petitioner and respondent and have also perused the record carefully.

7. Section 7(5)(a) of the Code is as follows:-

“5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there are no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”

8. The first issue for consideration is whether the present application is filed within limitation. It can be seen from the records that the date of default is mentioned as 01.05.2017, i.e., when the account was declared Non-Performing



Asset (NPA). However, the present petition was filed vide Diary No. 604 dated 06.02.2019. Thus, the present petition is well within the period of limitation of three years.

9. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by the computation of the claim as on 31.07.2018 (Exhibit C), Sanction letters (Exhibit D, AK & AI), Board Resolution (Exhibit E), Composite Hypothecation Agreements and Omnibus Counter Guarantee Agreement dated 06.04.2015 (Exhibits F, AM & G), Hypothecation of Debts Agreement (Exhibit I), Guarantee Agreements (Exhibits P, Q, AV, AW & AX), Agreements of Mortgage (Exhibits R & S), Confirmation of Deposit of Title Deeds of properties (Exhibits V, W, AB, AY, BD, BJ), Indenture of Lease (Exhibits Y), Lease Deeds dated 30.07.2005 (Exhibit AC), Board Resolutions (Exhibits AD, AE, AF, AJ, AL, AG, AZ & BA) and Charge and Hypothecation of Debts agreements dated 26.12.2016 (Exhibit AP) are attached with the main petition. As per the financial records, it is evident that an amount of Rs.4332.35 Lakhs (Rupees Forty-Three Crores Thirty-Two Lakhs Thirty-Five Thousand Only) is still pending along with the interest up to 31.07.2018 which amounts to default, when corporate debtor avoided the payment of outstanding amount despite repeated requests by petitioner-financial creditor.

10. It is pertinent to mention that an affidavit of Authorized Representative of the corporate debtor has been filed by learned counsel for the respondent/corporate debtor vide Diary No. 00451/5 dated 31.03.2023, wherein it is deposed that due to some unforeseen circumstances, the corporate debtor was unable to pay its debts and was declared as an NPA on 01.05.2017. It is further



deposed that the corporate debtor does not have funds to make repayments for the financial facilities availed by the corporate debtor from the petitioner/financial creditor bank.

11. In the given facts and circumstances, the present petition being complete and having established the default and also admitted by respondent/corporate debtor in payment of the Financial Debt for a sum of Rs.4332.35 Lakhs (Rupees Forty-Three Crores Thirty-Two Lakhs Thirty-Five Thousand Only) being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.
- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3)



shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

- f) The order of moratorium shall have effect from the date of this order till 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 the corporate debtor under Section 33 as the case may be.

12. The application filed in the prescribed Form No. 1 is found to be complete. Another condition is that there are no disciplinary proceedings pending against the proposed Resolution Professional. In the present case, in Part III of Form 1, Mr. Kannan Tiruvengadam has been proposed as Interim Resolution Professional (IRP). Form No.2 along with the certificate of IBBI issued in favour of the proposed Interim Resolution Professional i.e. Mr. Kannan Tiruvengadam are attached at Annexure-III of the petition. As per the available record, the AFA Certification is valid upto 12.12.2023. The Law Research Associate of this Tribunal has checked the credentials of Mr. Kannan Tiruvengadam and there is nothing adverse against him. In view of the above, we appoint Mr. Kannan Tiruvengadam, Registration No.IBBI/IPA-001/IP-P00253/2017-18/10482, Email: calkannan@gmail.com Mobile No.9836969699, the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Kannan Tiruvengadam shall be in accordance with the provisions of Section 16(5) of the Code;



- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government, and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and morals;
- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of



Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel, and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

- vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit



documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the constitution of the Committee to this Tribunal on or before the expiry



of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

13. We direct the Financial Creditor to deposit a sum of ₹1,50,000/- (Rupees One Lakh Fifty Thousand Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

14. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

15. The petition is admitted accordingly.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

April 18, 2023

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