



SL. No.17

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH**

**COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ – HON’BLE MEMBER (J)  
CORAM: SHRI. SANJAY PURI - HON’BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 16.07.2025 at 10:30 AM**

<b>TRANSFER PETITION NO.</b>	
<b>COMPANY PETITION/APPLICATION NO.</b>	<b>Company Petition IB/136/9/HDB/2024</b>
<b>NAME OF THE COMPANY</b>	<b>Pegasus Farmaco (India) Pvt Ltd</b>
<b>NAME OF THE PETITIONER(S)</b>	<b>Aarti Drugs Ltd</b>
<b>NAME OF THE RESPONDENT(S)</b>	<b>Pegasus Farmaco (India) Pvt Ltd</b>
<b>UNDER SECTION</b>	<b>9 of IBC</b>

**ORDER**

Orders pronounced, recorded vide separate sheets. In the result, the Company Petition IB/136/9/HDB/2024 is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH-II, HYDERABAD**

**CP(IB) No.136/9/HDB/2024**

*(Under section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (AAA) Rules, 2016)*

**Between:**

**M/s. Aarti Drugs Limited**

Mahendra Industrial Estate, Gr. Floor,  
Plot no. 109-D, Road no. 29,  
Sion East, Mumbai-400022.

**... Operational Creditor**

**And**

**M/s.Pegasus Farmaco India Pvt Ltd**

Address at 1-3-183/40/B/1,  
S.B.I Colony, Gandhi Nagar  
Hyderabad-500080.

**... Corporate Debtor**

**Date of Order: 16.07.2025**

**Coram:**

**Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)**

**Shri Sanjay Puri, Hon'ble Member (Technical)**

**Counsels Present:**

For the Petitioner : Mr. Kapil Shah & Ms. Kruthi Kalaga, Advocates  
For the Respondent : Ms. B. Saroj, Advocate



**[Per: Bench]**  
**ORDER**

1. This petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) is filed by M/s. Aarti Drugs Limited (**Petitioner/Operational Creditor/OC**) seeking initiation of the Corporate Insolvency Resolution Process (**CIRP**) against M/s. Pegasus Farmaco India Pvt. Ltd. (**Respondent/Corporate Debtor/CD**) for alleged default in payment of operational debt amounting to **Rs.8,61,80,362.50** (Rupees Eight Crores Sixty-One Lakhs Eighty Thousand Three Hundred Sixty-Two and Paise Fifty Only).

**Petitioner's Case:**

2. The OC supplied A.P.I. (pharmaceutical raw materials) and other related materials to the CD, at the location as requested by the CD.
3. The CD failed to honour its payment obligations, despite receipt of materials. At no point did the CD raise any dispute regarding the quality or quantity of the goods supplied.
4. An amount of Rs. 8,61,80,362.50 became due in terms of the 90-day credit period stipulated in the Purchase Orders and Invoices.
5. The OC issued multiple demands for payment. In response, the CD, as part of its assurance to clear the outstanding dues, issued several cheques between May 2023 and July 2023 towards part payment. However, upon presentation, all the cheques were dishonoured.



6. On account of the failure of payment by the CD, the OC issued a Demand Notice dated 26.07.2023 claiming Rs.10,20,47,884.66, including interest of Rs.1,58,67,522.16 calculated at the rate of 12% per annum. The outstanding principal amount claimed is Rs. 8,61,80,362.50. The Demand Notice reflects dues outstanding as on 30.06.2023, with interest continuing to accrue at 12% per annum from 01.07.2023 until payment and/or realization.
7. In support of its claim, the OC has placed on record a Certificate issued by Kotak Mahindra Bank dated 25.09.2023 under Section 9(3)(c) of the Code, confirming that no payments were credited by M/s Pegasus Farmaco India Pvt. Ltd. to the Current Account of M/s Aarti Drugs Ltd. during the period from 01.04.2021 to 31.03.2022.
8. Owing to the non-payment even after sending of the statutory Demand Notice, the OC has filed the present petition seeking initiation of CIRP against the CD.
9. By order dated 05.05.2025, this Authority closed the opportunity for the Respondent to file Vakalat and Counter due to their repeated failure to do so, despite being granted multiple opportunities.
10. We have heard Learned Counsel for the Petitioner and have gone through the entire record.

**Findings:**

11. In determining the maintainability of the present petition under Section 9 of the IBC, the criteria laid down by the Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353*, is directly applicable. The Court, in paragraph 34 of the said judgment, observed:



“The adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

- i. Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act)
- ii. Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and
- iii. Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?”

12. Applying the above principles to the present case, the materials (Purchase Orders & Invoices) on record establish that the OC and the CD were engaged in business, wherein the OC supplied goods and raised corresponding Tax Invoices. Invoices amounting to Rs.8,61,80,362.50 have been filed for the period from 2021 to 2022. The claim, therefore, clearly satisfies the threshold limit prescribed under Section 4 of the Code, fulfilling criterion (i) of the *Mobilox* test.

13. In respect of criterion (ii), the OC has not furnished sufficient documentary evidence, which corroborates the supply of goods and non-payment of the dues. The claims about earlier demands and dishonoured cheques must be backed by clear documents showing that the debt is due and has not been paid, which was a mere allegation, hence this criterion is not fulfilled.

14. Further, we move on to, Section 8(1) of the Code which mandates that an OC must deliver a Demand Notice to the CD before filing an application under Section 9. Rule 5 of the Insolvency and Bankruptcy (Application to



Adjudicating Authority) Rules, 2016 prescribes the form and manner of such delivery.

***Rule 5- Demand notice by Operational Creditor. —***

- 1) *An operational creditor shall deliver to the corporate debtor the following documents, namely.*
  - 
  - (a) *a demand notice in Form 3; or*
  - (b) *a copy of an invoice attached with a notice in Form 4.*
- 2) *The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,*
  - (a) *at the registered office by hand, registered post or speed post with acknowledgement due; or*
  - (b) *by electronic mail service to a whole-time director or designated partner or key managerial personnel, if any, of the corporate debtor.*
- 3) *A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any.*

15. It is found that the OC has produced a Demand Notice dated 26.07.2023 along with postal receipts in purported compliance with Section 8 of the IBC. However, there is no material on record i.e. postal tracking report to demonstrate that the said notice was served at the registered office of the CD, nor they have provided any information regarding the email being sent to email addresses of its directors, key managerial personnel, or designated partners, as mandated under the provisions aforementioned.

16. The Hon'ble NCLAT in ***Uttam Galva Steels Ltd. v. DF Deutsche Forfait AG & Ors., Company Appeal (AT) (Insolvency) No. 39 of 2017***, held that:

“Before filing an application under Section 9 of the Insolvency & Bankruptcy Code, 2016, the requirements under Section 8 are required to be fulfilled.”

17. Similarly, in ***Shailendra Sharma v. Ercon Composites, 2021 ibclaw.in 14 NCLAT***, the Hon'ble NCLAT reaffirmed:



“Service of Demand Notice to the Corporate Debtor under Section 8 is a mandatory requirement.”

18. We are of the considered view that the Notice under Section 8 of the IBC was not delivered to the registered address of the Corporate Debtor, and there is no proof of valid service in accordance with Rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

19. Thus, this CP(IB) No.136/9/HDB/2024 is dismissed.

**Sd/-**

**(SANJAY PURI)**  
**MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)**  
**MEMBER (JUDICIAL)**