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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

**PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL
HON'BLE SHRI NARENDER KUMAR BHOLA- MEMBER TECHNICAL**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 19.03.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP (IB) No. 223/9/HDB/2019
NAME OF THE COMPANY	Gold Fish Pharma Pvt Ltd
NAME OF THE PETITIONER(S)	Mundra Enterprises
NAME OF THE RESPONDENT(S)	Gold Fish Pharma Pvt Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

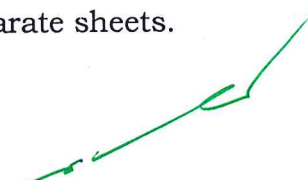
Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Orders pronounced vide separate sheets.


Member (T)

Binnu


Member (J)

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I**

CP (IB) No. 223/9/HDB/2019

*Petition under Section 9 of IBC, 2016
R/w Rule 6 of I & B (AAA) Rules, 2016*

In the matter of:-

Mundra Enterprises
"Ajay Arcade", # 71, 1st Floor
Vani Vilas Road
Basavangudi, Bengaluru – 04
Karnataka

... Petitioner/
Operational Creditor

VERSUS

Goldfish Pharma Private Limited
5-5-35/304/8/1 & 2, Mythri Nagar
Behind HUDA Truck Parking
Kukatpally, Hyderabad – 72
Telangana

...Respondent/
Corporate Debtor

Date of order: 19.03.2020

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)
Hon'ble Shri Narendra Kumar Bhola, Member (Technical)

Appearance:

For Petitioner: Shri Raj Kumar Grandhi along with Ms
Divya Datla, Advocates

For Respondent : Shri V.K. Sajith, Advocate

Heard on: 04.03.2020



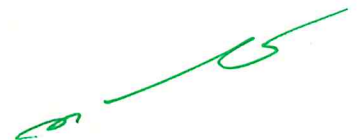


**PER: SHRI RATAKONDA MURALI
MEMBER (JUDICIAL)**

JUDGEMENT

1. Under consideration before us is the petition filed by M/s. Mundra Enterprises/ Operational Creditor, stating that M/s. Goldfish Pharma Private Limited, the Corporate Debtor herein had defaulted in repaying a sum of Rs. 73,68,371/- (Rupees Seventy Three Lakhs Sixty Eight Thousand Three Hundred Seventy One only) together with interest of Rs. 38,63,319/- (Rs. Thirty Eight Lakhs Sixty Three Thousand Three Hundred and Nineteen only), totalling to **Rs. 1,12,31,690/-** (Rupees One Crore Twelve Lakhs Thirty One Thousand Six Hundred Ninety only). Hence this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
2. Averments apropos to the Petition in brief are:-
 - 2.1 The Corporate Debtor placed purchase orders with Operational Creditor for supply of various pharmaceutical raw materials, basing on which Operational Creditor supplied materials to Corporate Debtor, the details of which are as under:-

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Date of Purchase Order	PO No	Amount of PO (in Rupees)	Material supplied	Value of goods supplied (in Rupees)
07.09.2015	RM/124/2015-16 for 400 kgs Alpha Lipoic Acid	17,80,000/-	300 Kgs	15,70,273/-
26.09.2015	RM/137/2015-16 for 1000 kgs of Hydroxy Propyl Methyl Cellulose-R5	5,30,000/-	1000 kgs	5,79,832/- Which includes CST of Rs. 11,369/- and excise duty of Rs. 38,462.73
31.12.2016	PO No. 88 for 30 kgs Orlistat	18,90,000/-	30 kgs	21,33,394/- including CST of Rs. 41,831.25 and excise duty of Rs. 2,01,562.50
16.01.2017	PO No. 97 for 90 kgs of Venlataxure HCL	3,42,000/-	130 kgs	5,60,235/- including CST of Rs. 10,985/- and excise duty of Rs. 55,250/-
19.01.2017	PO No. 98 for 1000 kgs of HPMC-E5	6,00,000/-	750 kgs	5,13,717/- including CST of Rs. 10,072.88 and excise duty of Rs. 53,643.75
16.02.2017	PO No. 108 for 850 kgs of Aplha Lipoil Acid USP	36,66,000/-	450 kgs	22,08,056/-
06.03.2017	PO No. 112 for 75 Kgs of Venlafacine HCL	2,85,000/-	75 kgs	3,23,213/- including CST of Rs. 6337.50 and excise duty of 31,875/-
27.04.2017	Po No. 14 for 50 kgs Iraconazole	5,67,500/-	50 kgs	5,67,500/-

2.2 The above raw materials were received and tax invoices issued by the Operational Creditor which are annexed and marked as Annexures E to Y respectively.

2.3 It is submitted the goods were supplied as per the purchase orders raised by the Corporate Debtor and adhoc part payments have also been made by the Corporate Debtor.

2.4 The following cheques issued by the Corporate Debtor have been returned by the Bankers with endorsement memo "CTS Clearing".

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- Cheque No. 000407 dated 02.03.2018 drawn on HDFC Bank amounting to Rs. 22,08,056/-.
- Cheque No. 000409 dated 15.03.2018 drawn on HDFC Bank amounting to Rs. 21,33,394/-.
- Cheque No. 000410 dated 24.03.2018 drawn on HDFC Bank amounting to Rs. 32,74,790/-.
- Cheque No. 000406 dated 26.02.2018 drawn on HDFC Bank amounting to Rs. 6,43,556/-

2.5 It is the case of Operational Creditor that the first invoice became overdue on 25.12.2015. However, Corporate Debtor has never adhered to the payment terms as mentioned in the invoices.

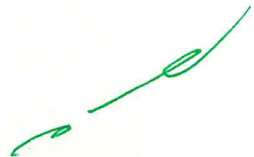
2.6 When the Corporate Debtor failed to service the debt amounting to Rs.1,12,31,690/- which includes interest of Rs.38,63,319/- @ 24% interest, the Operational Creditor issued demand notice in Form 3 on 11.02.2019. The date of default is 31.12.2018 which is reckoned from date of last payment made by the Corporate Debtor.

3. **Interim reply is filed by the Corporate Debtor. The contentions in brief are:-**

3.1 The preliminary objection taken by the Corporate Debtor is that the petition is not maintainable and denies the allegations and averments made by the Operational Creditor and alleged that Operational Creditor has concealed entire facts before this Tribunal.

3.2 It is submitted by the Corporate Debtor that there is no liability against the Operational Creditor and that the Petitioner does not qualify as an operational creditor under the provisions of IBC, 2016. The outstanding amount mentioned in the petition is disputed and termed the claim as illegal.





3.3 The next objection raised by the Corporate Debtor is that it did not receive the Demand Notice allegedly sent by the Operational Creditor. Further it is contended that Operational Creditor failed to file an Affidavit as required under Section 9 (3) (b) of IBC, 2016, as such the present Petition is devoid of merits and urged this Tribunal to dismiss the Petition.

4. **Interim-Rejoinder is filed by the Operational Creditor refuting the allegations made by the Corporate Debtor and submitted as under:-**

4.1 The stand taken by the Corporate Debtor that the claims are barred by limitation is incorrect. It is submitted that the Operational Creditor and Corporate Debtor have an on-going account and all payments were accounted for.

4.2 The Operational Creditor denies the contention of the Corporate Debtor that it has not received the Demand Notice sent by the Operational Creditor. The Demand Notice dated 11.02.2019 was served on 14.02.2019 and memo of service of notice is filed which is marked as Annexure DD.

4.3 It is reiterated by the Operational Creditor that the debt due is an operational debt and the same is due from the Corporate Debtor.

4.4 It is the case of Operational Creditor that no valid ground is stated by the Corporate Debtor for non-maintainability of the petition.

5. **FINAL COUNTER / REPLY BY CORPORATE DEBTOR**

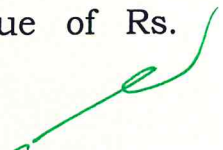
A final reply / counter is filed by the Corporate Debtor refuting the averments made by the Operational Creditor and contested as under:-

5.1 The Corporate Debtor submits that the petition is devoid of merits as some invoices which are illegally filed are barred by limitation.

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- 5.2 That the Operational Creditor has not disclosed the actual facts and circumstances transpired between both parties and the petition filed is illegal and against the provisions of IBC.
- 5.3 It is the case of Corporate Debtor that it is only liable to pay Rs. 63,82,171/- and not Rs. 1,12,31,690/- as claimed by the Operational Creditor. Further there is no mention about the interest component in the terms and conditions of the Purchase Orders.
- 5.4 It is contended that, out of Rs. 63,82,171/- outstanding, the Corporate Debtor in turn has supplied goods/materials worth Rs. 20,03,050/- to the Operational Creditor in the months of July, 2018, October, 2018, December, 2018 and February, 2019 and relied on the Ledger Account at page No. 73 & 74 of the petition. It is also stated that Operational Creditor never disputed the material supplied by the Corporate Debtor towards repayment of debt by it till date.
- 5.5 It is submitted that the actual outstanding amount of Rs. 51,68,246/- and it is barred by limitation and further contended that goods worth Rs.12,13,925/- were supplied by the corporate Debtor to the Operational Creditor between June 2018 to February 2019. As such even if there is a debt to the tune of Rs. 51,68,246/- arrived at till February 2019, it ought not to be considered as amount in default by the Operational Creditor as debt was being repaid in the form of supply of goods / materials which was being accounted for by the Operational Creditor in its ledger account and that the debt as on date of issuance of notice was not due and demand notice itself is bad in law. It is the case of Corporate Debtor that the Operational Creditor mentioned date of default as 31.10.2018 though invoice was raised by the Operational Creditor on 01.12.2019 also for total value of Rs.

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1,18,000/-. Further Operational Creditor avoided transaction worth Rs. 2,12,400/- which was supplied to the Operational Creditor as per Goods Consignment Note dated 04.02.2019, to show default has occurred on the date of issuance of Demand notice dated 11.02.2019.

5.6 It is contended, the Operational Creditor failed to comply with Section 9 (3) (b) of the Code and urged the Adjudicating Authority to dismiss the case as the petition is incomplete as per section 9 (5) (ii) (a) of the Code.

6. **FINAL REJOINDER BY THE OPERATIONAL CREDITOR TO THE FINAL REPLY OF CORPORATE DEBTOR**

6.1 The operational Creditor denies the contention of the Corporate Debtor that it was regular in making payments as per the purchase orders. It is submitted that it is a running account and the Corporate Debtor always advanced adhoc payments. The material purchased by the Operational Creditor from the Corporate Debtor is Rs.10,01,525/-and after deduction of this amount, the amount due without interest is Rs.63,81,171/-. With regard to interest component, it is submitted that the same is mentioned @ 24% per annum in every invoice.

6.2 It is reiterated by the Operational Creditor that cheques amounting to Rs. 82,59,796/- which were issued by the Corporate Debtor were not cleared because of insufficient funds.

6.3 It is submitted that at para 5 (d) of its counter, the Corporate Debtor has mentioned incorrect figures with regard to the closing balance of the Operational Creditor.

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6.4 It is the case of Operational Creditor that liability has been accepted by the Corporate Debtor though the amount in default is disputed.

7. **FINDINGS**

7.1 We have heard the Counsel for Operational Creditor and Counsel for Corporate Debtor. This is a petition filed under Section 9 of IBC against the Corporate Debtor alleging Corporate Debtor committed default of operational debt of Rs. 73,68,371/- with interest @ 24% per annum which comes to Rs. 38,63,319/-, totalling Rs. 1,12,31,690/-.

7.2 It is the case of Petitioner / Operational Creditor that it has supplied goods to the Corporate Debtor basing on the purchase orders starting from 07.09.2015. It is also the case of Operational Creditor that it has raised tax invoices for each purchase order after supplying the goods. It is the case of Operational Creditor that it has filed all the purchase orders as well as the invoices raised against Corporate Debtor from time to time. It is also the case of Operational Creditor that it has filed transportation challans for transporting the goods to the Corporate Debtor and delivery taken by the Corporate Debtor.

7.3 We have seen the Purchase Orders. The invoices and the copies of transportation challans. They are shown as Annexures E to Y. They are at page nos. 41-61.

7.4 We have seen the Purchase Orders as well as tax invoices. The Operational Creditor is able to establish by satisfactory evidence that goods were supplied to the Corporate Debtor. It is also the case of Operational Creditor that the cheques issued by the Corporate Debtor

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were dishonoured due to “insufficient funds”. Cheque return (CTS) Memos is marked as Annexure-Z at page Nos 62-65. All the cheques were not honoured due to “insufficient funds” in the account of Corporate Debtor.

7.5 It is also the case that Operational Creditor had issued demand notice dated 11.02.2019 in Form 3 & 4 which were duly served on the Corporate Debtor. The Operational Creditor filed interim rejoinder enclosing the information obtained from India Postal Website about service of demand notice on Corporate Debtor. It cannot be said that Demand Notice was not served on the Corporate Debtor. The Operational Creditor is able to prove that demand notice was served on the Corporate Debtor. Admittedly, the Corporate Debtor did not issue any reply to the demand notice. There was no prior dispute before issuing the Demand Notice to the Corporate Debtor.

7.6 The Corporate Debtor first filed interim counter. He has not enclosed any documents establishing any pre-existing dispute prior to demand notice. Even in the final counter, the Corporate Debtor relied on the alleged letter dated 29.09.2018, as if there was a pre-existing dispute and it was intimated to the Operational Creditor. This letter has not seen the light of the day till it was filed with the final reply. This letter was not filed along with the interim counter filed on 05.08.2019. Had it been really existing on the date on which it was stated to have been prepared, then this letter should have been filed along with the interim counter. Secondly, there is no proof that this letter was served on the Operational Creditor. No proof is filed for service of this hand written letter to the Corporate Debtor. Even there was no reply to the Demand Notice

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mentioning about this hand written letter to the Operational Creditor. This letter cannot be given any credence. It has no evidential value and it will not throw light on the case of Corporate Debtor. This letter can be safely ignored.

7.7 It is the case of Corporate Debtor that it supplied some goods to the Operational Creditor and that some amount are to be adjusted against the amount due under the invoices raised by the Operational Creditor. It is interesting to note that except hand written letter there is no other document to show that Operational creditor was liable to pay any amount to the Corporate Debtor under the alleged invoices and delivery challans filed with final reply shown at page Nos. 8-23. It is the case of Operational Creditor that no amount is due in respect of all the invoices filed by Corporate Debtor shown at page Nos. 8-23 of the final counter. Except hand written letter, there is no demand sent to the Operational Creditor regarding alleged amount due under the invoices filed along with the final reply. Thus, there is no pre-existing dispute and the alleged dispute is not a real dispute. It is only spurious and illusionary defence which is not supported by evidence.

7.8 The next contention of Corporate Debtor is that certain invoices are barred by limitation as they were raised three years prior to filing of petition under Section 9 of IBC. It is the case of Operational Creditor that some payments were received from the Corporate Debtor. So, it is a running account and date of raising invoices cannot be the starting point for computation of limitation but part payments will give fresh period of limitation. The Corporate Debtor even disputed the claim amount. It is

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for the Resolution Professional to verify the claim. The Corporate Debtor admits liability of more than Rs. 1 lakh to the Operational Creditor. Even on this ground also, the Petition is liable to be admitted. Thus, there is no prior dispute and the Operational Creditor is able to establish default of operational debt and as such the Petition is liable to be admitted.

- 7.9 The Operational Creditor failed to name anyone as Interim Resolution Professional and has requested the Tribunal to appoint one for the Corporate Insolvency Resolution Process. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period 1ST January 2020 to 30th June 2020 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Shri Satyanarayana Veera Venkata Chebrolu, # R/o Flat No. 201, Chandana Residency, MIG 512 & 513, Phase- I & II, Near Temple Bus stop, KPHB Colony, Kukatpally, Hyderabad – 500072, Mob. No. 9291240612 email: chvvsniob@yahoo.co.in having Registration No. IBBI/IPA-003/IPA-ICAI-N00224/2019-2020/12677 as Interim Resolution Professional. The aforesaid interim resolution professional has no disciplinary proceedings pending against him. He shall file his written communication and all relevant paper immediately before Registrar of this Tribunal but not later than two days.

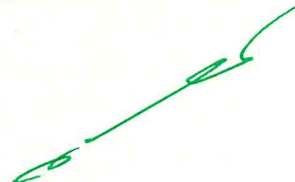
ORDER

8. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

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- 8.1 The 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- 8.2 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.
- 8.3 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.
- 8.4 That the order of moratorium shall have effect from 19.03.2020 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, whichever is earlier.

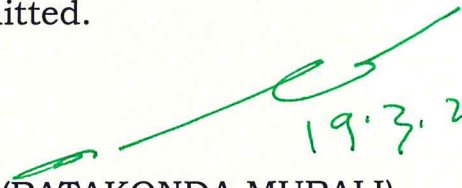




- 8.5 The Petitioner is directed to pay a sum of Rupees 1,00,000/- (One Lakh Only) to the interim resolution professional to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the committee of creditors as accounted for by interim resolution professional and shall be paid back to the petitioner.
- 8.6 That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- 8.7 Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.

Accordingly, this Petition is admitted.


19.3.2020
(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)


19.3.2020
(RATAKONDA MURALI)
MEMBER (JUDICIAL)