

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, MUMBAI BENCH

C.P. (IB) 4183/MB/C – V/2018

CORAM:

SMT. SUCHITRA KANUPARTHI
MEMBER (J)

SHRI. V. NALLASENAPATHY
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 09.07.2020

NAME OF THE PARTIES: Alliance Biotech
V/s
Thrive Therapeutic Pvt. Ltd.

Section 9 of the Insolvency and Bankruptcy Code, 2016.

ORDER

1. CP (IB) 4183/MB/C – V/2018

Petition admitted.

Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH

CP (IB) 4183/MB/2018

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

Alliaance Biotech

440/3, Village Katha, Baddi-173205, Tehsil
Nalagarh, Dist. Solan, Himachal Pradesh

...Petitioner

v/s.

M/s. Thrive Therapeutic Private Limited
A-1, Gala No. 109, New Rajshree Industrial
Estate, Chitalsar, Manpada, G. B. Road,
Thane-400607.

... Corporate Debtor

Order pronounced on: 09.07.20

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Amit A. Tungare, Advocate.

For the Respondent: None Present

Per: V. Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by Mr. Shishir Gupta partner of the registered partnership firm, Alliance Biotech (hereinafter called "Petitioner") against Thrive Therapeutic Private Limited (hereinafter called "Corporate Debtor") under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") for initiation of Corporate Insolvency Resolution Process (CIRP) read with rule 5 and 6 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 ("Rules") alleging that the Corporate Debtor defaulted in making payment to the extent of Rs. 1,11,46,068/-.
2. The Petition reveals that the Petitioner is engaged in business of manufacturing pharmaceuticals products and supplied pharmaceuticals materials to the Corporate Debtor. It is also noticed that the Corporate Debtor also supplied some goods to the Petitioner. The Petitioner billed the Corporate Debtor to the extent of Rs. 3,21,28,301/- and also received supplies from the Corporate Debtor to the extent of Rs, 71,77,604/- and the net receivables from the Corporate Debtor was Rs. 2,49,50,697/-. The Petitioner received payments to the extent of Rs. 1,56,86,274/- and there is balance due of Rs. 92,62,423/-

receivable from the Corporate Debtor. The invoices raised by the Petitioner provides that the Corporate Debtor is liable to pay 24% interest p.a. on the delayed payments.

3. The Petitioner issued a demand notice in Form No. 3 and Form No. 4 on 18.07.2018 demanding the Principal due of Rs. 92,64,423/- along with interest of Rs. 18,81,645/-, calculated upto 10.7.2018, aggregating to Rs. 1,11,46,058/-. The demand notice sent by post to the Corporate Debtor was returned with an endorsement "door locked". Hence, on 24.07.2018, the demand notice was served by email to the Corporate Debtor. The Corporate Debtor sent reply accepting liability for Rs. 13,83,521/- by email dated 24.07.2018 and the same is extracted below: (exhibit: H page 107)

"Sir,

In response to your mail I have send several mail earlier, that clearly indicates the due amount with acceptance, for your reference you can refer mail dated 07.05.2018, 12.55 pm that clearly indicates the amount dues INR 13,83,521.34 as on date.

Sir without prejudice to my legal right I have send you several mail regarding amount due, I do not agree with the amount which you are asking now. Due amount has been discussed on phone along with cost sheet, invoice of materials supplied.

After that we did not execute any business with each other.

Thanking you.

For Thrive Therapeutic Pvt. Ltd.”

4. The Counsel for the Petitioner submits that the Petition was served on the Corporate Debtor and filed proof of service to that effect. Subsequently, the Counsel for the Petitioner intimated the date of hearing to the Corporate Debtor, however, there was no representation from the side of the Corporate Debtor.
5. Heard the Counsel for the Petitioner. We have gone through the Petition and the statement of accounts enclosed to the Petition at page 41 to 44 which clearly shows that the Corporate Debtor owes more than Rs.1,00,000 to the petitioner and defaulted in making the payment.
6. It is to be noted that the Corporate Debtor accepted liability only to the extent of Rs. 13,83,521/-. In view of this, the Interim Resolution Professional will go into the details of claim to be filed by Petitioner at the time of collating the claim. Since the Corporate Debtor failed to make payment of even the admitted debt amount, debt being more than Rs. 1 lakh as provided under section 4 of the Code, the Petition deserves admission.
7. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9

of the Insolvency & Bankruptcy Code admits this petition declaring moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; 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.
- (b) 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.
- (c) 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.

- (d) that the order of moratorium shall have effect from today till the completion of the CIRP 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.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.
- (f) that this Bench hereby appoints Mr. Sitansh A. Magia, residing at Flat No. 6, Kamdar Chember A-wing Plot No. 251, Sion East, Mumbai-400022; Email id. s.magia@yaoo.com, having Registration No. IBBI/IPA-002/IP-N00293/2017-2018/10850 as Interim Resolution Professional to carry the functions as mentioned under the Code.

8. Accordingly, this Petition is admitted.

9. The Registry is directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

-Sd-

V. Nallasenapathy
Member (Technical)

-sd-

Suchitra Kanuparthi
Member (Judicial)