IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT-III

No. CP (IB)-141/(MB)/2020 &
IA 853/2020 in CP (IB)-141/(MB)/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to adjudicating Authority) Rules, 2016).

In the matter of

Prashant Electricals Ltd.
S-20, Vikram Glass Naka, MIDC, Tarapur Indl. Area, Boisar, Tal/Dist: Palghar, Pin 401506.

.... Operational Creditor

versus

VETPharma Ltd.
E-62, MIDC, Tarapur, Boisar, (WRly), District Palghar, Thane-401505

.... Corporate Debtor

And in the matter of

IA 853/2020
Prashant Electricals Ltd ... Applicant
versus
VETPharma Ltd ... Corporate Debtor

Order delivered on: 02.05.2022

Coram:
Hon'ble Shri. H. V. Subbarao, Member (Judicial)
Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

Appearance (through video conferencing).

For the Operational Creditor : Mr. Devul Dighe, Advocate

For the Corporate Debtor : Mr. Yash Pandya, Advocate

Per Chandra Bhan Singh, Member (Technical)

ORDER

1. This Company Petition is filed by M/s. Prashant Electricals Ltd., (hereinafter called "Operational Creditor") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against VETPharma Ltd. (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Operational Creditor in view of the invoices raised by them upon the Corporate Debtor, by invoking the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter called the "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for a Resolution of Operational Debt of Rs.12,93,143/- and interest as per the decree dated 23.07.2019.

2. The counsel appearing on behalf of the Operational Creditor submitted that the Operational Creditor has supplied material to the corporate debtor during the period from 09.02.2016 to 27.06.2016 and raised 3 invoices aggregating to Rs.13,84,343/-. Against the invoice dated 09.02.2016 the Corporate Debtor made advance payment of Rs.3,62,000/- on 22.01.2016 and therefore the balance principal amount of about Rs.10,22,343/- remains to be paid by the Corporate Debtor to the Operational Creditor.

3. The Counsel for the Operational Creditor states that the Operational Creditor filed a Special Civil Suit No. 39 of 2017 before the Hon'ble Civil Jude (Senior Division Palghar) and the Hon'ble Court passed a Decree dated 23.07.2019 of

Rs.12,93,143/- with further interest at the rate of 6% till realization.

4. The counsel for the Operational Creditor states that as there was no payment received from the Corporate Debtor after the Decree by Hon'ble Civil Court, the Corporate Debtor failed to make the outstanding payment and therefore, the Operational Creditor through their Advocate sent a Demand Notice under Section 8 of the Code dated 19.09.2019, *inter alia*, demanding payment in respect of unpaid operational debt amounting to Rs.12,93,143/-.

5. The Operational Creditor has annexed the following documents with the petition:
   i. Copy of Demand Notice dated 05.12.2019 (ANNEXURE 1 of the Petition);
   ii. Copy of 3 Invoices dated 09.02.2016, 22.06.2016, 27.06.2016 (ANNEXURE 5 of the Petition) (Colly);
   iii. Copies of Ledger accounts for the year 2015-2016 to 2018-2019 (ANNEXURE -4 of the Petition);
   iv. Copy of Decree dated 23.07.2019 passed by Hon'ble Civil Judge Palghar in special Civil suit (ANNEXURE-7 of the Petition);
   v. Copy of legal Notice dated 25.07.2017 (ANNEXURE -6 of the Petition);
   vi. Copy of affidavit of no notice of dispute (ANNEXURE -11 of the Petition).

IA 853/2020 filed by the Applicant/ Operational Creditor :-

6. This **IA No. 853/2020** is filed by the Applicant/ Operational Creditor in this matter on 05.03.2020 seeking an order of injunction against sale of property to Bajaj Healthcare by the

Corporate Debtor, VETPharma. The Applicant submits that during pendency of the main Company Petition CP(IB)-141/(MB)/2020, the Corporate Debtor entered into an agreement with Bajaj Healthcare Ltd ("Bajaj") for sale of their manufacturing facility of bulk drug and API along with all the movable and immovable property and plant and machinery. The Prayers in the above IA 853/2020 are as follows:-

"*(a) That this Hon'ble Tribunal be pleased to pass an order and direct the Corporate Debtor to maintain status quo of all their movable or immovable properties including all plant and machinery till the disposal of the captioned application.*

(b) Pending the hearing and final disposal of this captioned application, the Corporate Debtor be restrained by an order of this Hon'ble Tribunal from transferring any property to Bajaj."

FINDINGS :-

7. CP 141/2020 has been filed u/s 9 of the IB Code by M/s Prashant Electricals Ltd, Operational Creditor, against VETPharma Ltd, the Corporate Debtor/ Respondent for about Rs.12.93 Lakh which has arisen for supply of goods under three Invoices during the period 09/02/2016 to 27/06/2016 along with interest as per the decree dated 23/07/2019.

8. The Corporate Debtor in spite of being given several chance to file reply did not file any reply. Therefore, in the hearing held on 06/01/2022 the Corporate Debtor was set ex parte and the matter was heard on 14/03/2022 and again on 20/04/2022 and was Reserved for Orders.

9. The Petitioner had earlier in 2017 filed a Special Civil Suit No.39 of 2017 before the Hon'ble Civil Judge (Senior Division, Palghar)

and the Hon'ble Court has passed a decree of Rs.12,93,143/- with further interest.

10. The main issue in the present Petition is whether the decree holder M/s Prashant Electricals Ltd who holds a decree against the Corporate Debtor M/s VETPharma Ltd qualifies as a Financial Creditor or an Operational Creditor. In this regard, the Hon'ble Supreme Court of India in the *Special Leave to Appeal (C) No.6104/2022* on 14.03.2022 in the matter of *Subhankar Bhowmik Versus Union of India & Anr* have held that decree holder as a class of Creditors are separate from Financial Creditors and Operational Creditors. The conclusion, therefore, is that IBC treats decree holders as a separate class of Creditors and it does not fall in the category of either a "Financial Creditor" or an "Operational Creditor". The relevant para of the said Judgment of the Hon'ble Supreme Court in this regard is as under:-

> *"[11]Looked at from another angle, the decree-holder gets a statutory status as a creditor under Section 3(10) of the IBC, by virtue of the decree. Since the decree cannot be executed by operation of the moratorium under Section 14, the IBC makes a provision to protect the interests of a decree holder by recognizing it as a creditor. The interest recognized is that in the decree and not in the dispute that leads to the passing of the decree. This is apparent from the fact that decree holders as a class of creditors are kept separate from "financial creditors" and "operational creditors". No divisions or classification is made by the statute within this class of decree holders.* ***The inescapable conclusion from the aforesaid discussion is, that the IBC treats decree holders as a separate class, recognized by virtue of the decree held. The IBC does not provide for any malleability or overlap of classes of creditors to enable decree holders to be classified as a financial or operational creditors."***

11. In this regard it is worthwhile to quote Section 14 of the IBC which provides as under:-

> "*14. **Moratorium**. - (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:-*
>
> *(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) ……*"

It can be seen that the Hon'ble Supreme Court has held in the matter of *Subhankar Bhowmik versus Union of India & Anr* that a decree is amenable to challenge by way of an appellate process or by way of objections in the execution process. Therefore, passing of a decree may be a recognition of the claim of the decree holder. However, the said claim is subject to doubt till the execution proceedings are completed. Therefore, as per the Order of the Hon'ble Supreme Court in the matter of *Subhankar Bhowmik versus Union of India* whereas IBC recognizes decree holder as a class of creditor whose claim needs to be acknowledged in the Corporate Insolvency Resolution Process (CIRP). However, the decree holder cannot be termed as an Operational Creditor or Financial Creditor.

12. The Bench is clear that as per Section 6 of the IBC, the CIRP can only be initiated by a Financial Creditor or an Operational Creditor or the Corporate Debtor itself. Section 6 of IBC in this regard reads as under:-

> "***6. Persons who may initiate corporate insolvency resolution process.*** –

> *Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.*"

13. In this instant Petition and in line with the Hon'ble Supreme Court Order, the decree holder is neither a Financial Creditor nor an Operational Creditor. Therefore, as per Section 6 of IBC, the decree holder by law is not entitled to initiate CIRP against the Corporate Debtor.

14. In view of the above, the **CP(IB)-141/(MB)/2020** and **IA 853/2020** are "**dismissed**" accordingly.

Sd/-	Sd/-
CHANDRA BHAN SINGH	**H.V. SUBBA RAO**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**