IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, BENCH

CP (IB) No. 194/09/HDB/2019
Under Section 9 of the IB Code, 2016,
Read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of
M/s. Aspen Biopharma Labs Pvt Ltd

Between:

Survival Technologies Pvt Ltd.,
1401, A wing, Naman Midtown,
Senapati Bapat Marg,
Elphinstone,
Mumbai – 400013
Represented by its authorised signatory,
Mr. Chetan Mehta.

... Petitioner/
Operational Creditor

And

M/s. Aspen Biopharma Labs Pvt Ltd
Biotech Park Phase 11, Plot No.10,
Lalgadimalakpet, Shameerpet,
Turkapalli, Hyderabad – 500078,
RR district, Telangana.

... Respondent/
Corporate Debtor

Date of order: 29.11.2019.

Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/counsels present:

For the Petitioner/Operational Creditor:

Mr. Krishna Kedia, Counsel.

For the Respondent/Corporate Debtor:

Mr. T. Surya Satish, Counsel.

Per. K. Anantha Padmanabha Swamy, Member Judicial.

ORDER

1. Under consideration is Company Application filed by M/s. Survival Technologies Pvt Ltd (in short, "**Petitioner/Operational Creditor**") against M/s. Aspen Biopharma Labs Pvt Ltd (in short, "**Respondent/Corporate Debtor**") under section 9 of the Insolvency and Bankruptcy Code, 2016 (in short, **IB Code, 2016**)

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read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, **IB Rules, 2016**).

2. Brief facts of the present Petition are as under:

a) Operational Creditor supplied various raw materials to Corporate Debtor through various purchase orders placed by Corporate Debtor on Operational Creditor as set out hereunder for which corresponding invoices were raised by Operational Creditor on Corporate Debtor (Collectively referred to as **Contracts**):

i. Contract for sale of material Z-7 as per Purchase Order No. ABPLO/019/05/2018/19 dated 03.05.2018 from Corporate Debtor to Operational Creditor for which invoice No.287 dated 05.05.2018 for Rs.27,73,000/- has been raised by Operational Creditor. Date from which debt fell due: 14.07.2018.

ii. Contract for sale of material D-5 as per Purchase Order No. ABPLO/019/05/2018/19 dated 03.05.2018 from Corporate Debtor to Operational Creditor for which invoice No.288 dated 05.05.2018 for Rs.34,22,000/- has been raised by Operational Creditor. Date from which debt fell due: 14.07.2018.

iii. Contract for sale of material Oxalyl Chloride as per Purchase Order No. ABPLO/027/05/2018/19 dated 10.05.2018 from Corporate Debtor to Operational Creditor for which invoice No.380 dated 16.05.2018 for Rs.35,400/- has been raised by Operational Creditor. Date from which debt fell due: 15.07.2018.

iv. Contract for sale of material Trifluoro Acetic as per Purchase Order No. ABPLO/028/05/2018/19 dated 14.05.2018 from Corporate Debtor to Operational Creditor for which invoice No.402 dated 18.05.2018 for Rs.1,77,000/- has been raised by Operational Creditor. Date from which debt fell due: 17.07.2018.

v. Contract for sale of material Chloro-tri-ethyl Silane as per Purchase Order No. ABPLO/35/05/2018/19 dated 25.05.2018 from Corporate Debtor to Operational Creditor for which invoice No.503 dated 29.05.2018 for

Rs.3,54,000/- has been raised by Operational Creditor. Date from which debt fell due: 28.07.2018.

vi. Contract for sale of material TEMPO as per Purchase Order No. ABLPO/41/05/2018/19 dated 28.05.2018 from Corporate Debtor to Operational Creditor for which invoice No.511 dated 30.05.2018 for Rs.27,73,000/- has been raised by Operational Creditor. Date from which debt fell due: 29.07.2018.

vii. Contract for sale of material Diethyl Amino Sulfur Tri-fluoride as per Purchase Order No. ABLPO/44/06/2018/19 dated 04.06.2018 from Corporate Debtor to Operational Creditor for which invoice No.607 dated 06.06.2018 for Rs.65,903/- has been raised by Operational Creditor. Date from which debt fell due: 05.09.2018.

viii. Contract for sale of material Tri-phenyl Phospine as per Purchase Order No. ABLPO/45/04/2018/19 dated 07.06.2018 from Corporate Debtor to Operational Creditor for which invoice No.628 dated 08.06.2018 for Rs.4,48,400/- has been raised by Operational Creditor. Date from which debt fell due: 06.09.2018.

ix. Contract for sale of material Hexamethyl Disilazane as per Purchase Order No. ABLPO/43/05/2018/19 dated 31.05.2018 from Corporate Debtor to Operational Creditor for which invoice No.629 dated 08.06.2018 for Rs.20,060/- has been raised by Operational Creditor. Date from which debt fell due: 06.09.2018.

x. Contract for sale of material Oxalyl Chloride as per Purchase Order No. ABLPO/48/06/2018/19 dated 12.06.2018 from Corporate Debtor to Operational Creditor for which invoice No.682 dated 14.06.2018 for Rs.35,400/- has been raised by Operational Creditor. Date from which debt fell due: 12.09.2018.

xi. Contract for sale of material Pyridine Sulfur Trioxide Complex as per Purchase Order No. ABLPO/47/06/2018/19 dated 11.06.2018 from Corporate Debtor to Operational Creditor for which invoice No.703 dated

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17.06.2018 for Rs.14,160/- has been raised by Operational Creditor. Date from which debt fell due: 15.09.2018.

xii. Contract for sale of material Hexamethyl Disilazane as per Purchase Order No. ABLPO/43/05/2018/19 dated 31.05.2018 from Corporate Debtor to Operational Creditor for which invoice No.857 dated 04.07.2018 for Rs.19,85,940/- has been raised by Operational Creditor. Date from which debt fell due: 02.10.2018.

xiii. Contract for sale of material Imidazole as per Purchase Order No. ABLPO/63/07/2018/19 dated 02.07.2018 from Corporate Debtor to Operational Creditor for which invoice No.879 dated 06.07.2018 for Rs.29,500/- has been raised by Operational Creditor. Date from which debt fell due: 04.09.2018.

b) That the total amount of default (Rs. 93,82,003/- plus interest @ 24% per annum is Rs.1,07,38,501/-) is constituted by different purchase orders. Each of the above amounts fell due on different dates.

3. In addition to the above purchase orders, the Operational Creditor filed other documents in order to prove the existence of operational debt and the amount in default:

   a. Copies of purchase Orders from Corporate Debtor to Operational Creditor.

   b. Copies of invoices raised by Operational Creditor for supply of raw material to Corporate Debtor as per the purchase orders from Operational Creditor.

   c. Email dated 24.07.2018, from Corporate Debtor to Operational Creditor indicating that part payment will be released by 10.08.2018.

   d. Email dated 07.08.2018 from Operational Creditor to Corporate Debtor requesting release of the due payment.

   e. Email dated 10.08.2018, from Corporate Debtor to Operational Creditor indicating that part payment will be released by 15.08.2018.

f. Email dated 17.08.2018, from Operational Creditor to Corporate Debtor once again requesting release of the due payment as per email dated 10.08.2018 from Corporate Debtor.

g. Transcript of telephonic conversation dated 22.09.2018 between Mr. Ravi of Corporate Debtor with Mr. Chetan of Operational Creditor wherein Mr. Ravi has confirmed release of payment to Operational Creditor.

h. Email dated 24.09.2018 from Operational Creditor to Corporate Debtor, once again requesting release of the due payment pursuant to tele communication between the Companies for release of payment.

i. Email dated 11.10.2018 from Operational Creditor to Corporate Debtor requesting release of entire due amount failing which company will be compelled to take legal recourse.

j. Copy of Form 3 dated 22.10.2018 along with postal receipts.

Relying on the aforesaid evidence to prove the existence of debt and default. the counsel for the Operational Creditor prayed to admit the matter.

4. Respondent/Corporate Debtor filed its counter on 26.07.2019 inter-alia stating as under:

i) That on 22.06.2019 the Operational Creditor sent an email stating that total due amount is Rs.93,82,003/- and requested for payment at the earliest. It is mentioned that:

A. On 03.05.2018, the Corporate Debtor has placed an order bearing no. ABLPO/019/05/2018/19 for 4-(4-Fluorophenyl)-6-Isopropyl-2-(N-Methyl-N-Meth) for 500 Kgs amounting to Rs.27,73,000/-. The same was received by the Corporate Debtor on 11.05.2018 and the material description was "white to pale yellow solid". As soon as the material was received by the Corporate Debtor it was sent for synthesis without any analysis believing the Operational Creditor and its reputation. After commencement of the preparation of medicine, in the third stage, the Corporate Debtor found that the product has impurities and therefore the Corporate Debtor could not get the desired final product rather ended up in failure of solubility and assay by HPLC (High Performance Liquid Chromatography). As there was failure in getting the final product due to the impurity in the raw material delivered by the Operational Creditor, the said material was sent for standard specification and the result was off white solid and the melting point was 140.6-143.4 whereas it was supposed to be 137-140. The result was only 92.4% when it was supposed to be not less than 98%.

B. On 03.05.2018, the Corporate Debtor has placed an order bearing no. ABLPO/019/05/2018/19 for Tert-Butyl 2- (4R, 6S)-6-(Acetoxyemethyl)-2, 2 – Dimeth for 500 Kgs amounting to Rs.34,22,000/-. Even for this product the Corporate Debtor had the similar experience.. The raw material was sent for testing and the result was off white solid and the melting point was 91.3% when it was supposed to be not less than 98%.

ii) That the Operational Creditor can neither compel the Corporate Debtor to pay for sub-standard material nor can compel the Corporate Debtor to manufacture the drugs with this impure and substandard material thereby endangering the lives of the public. Therefore, the claim made by the Operational Creditor in respect of the substandard material that was sent and was not picked up even after showing the results with proof, amounts to a usurious and frivolous claim, which is not legally and lawfully payable by the Corporate Debtor.

Reiterating the above averments, the counsel for the Respondent/Corporate Debtor prayed to dismiss the matter.

5. Petitioner/Operational Creditor filed rejoinder on 09.08.2019 inter-alia stated as under:

i. That the total sum of Rs.93,82,003/- was due with regard to the above mentioned purchase orders and invoices, and payable by the Corporate Debtor to the Operational Creditor in toto as on October, 2018. There has never been any dispute between the Operational Creditor and Corporate Debtor with respect to the raw material supplied by the Operational Creditor to the Corporate Debtor.

6. That the raw material supplied to the Corporate Debtor by the Operational Creditor are under several purchase orders as enumerated in the above. The said raw materials have been utilised/stored by the Corporate Debtor for a period of four months which is a considerable period for the material to get spoilt having regard to their chemical nature. From July, 2018 i.e., the date when the last raw material was supplied until 22nd October, 2018 i.e., the date when the notice under the provisions of the Insolvency and Bankruptcy Code, 2016 was sent, the Corporate Debtor has not raised any issue/dispute in relation to the quality of any raw material received.

7. That there has been no intimation to the Operational Creditor regarding any quality issue of product to the Corporate Debtor, in the absence of which, the Operational Creditor cannot be saddled with any responsibility towards the same. Further, the email dated 11.02.2019 was nothing but an afterthought on receipt of demand notice u/s. 8 of IBC, 2016.

8. The Operational Creditor was constrained to issue notice dated 22.10.2018 under the provisions of the IBC, 2016 to the Corporate Debtor when despite the repeated assurances both verbal and written, the Corporate Debtor failed to make any payment to the Operational Creditor.

9. That in discharge of part of its total liability of Rs.93,82,003/-, the Corporate Debtor had also issued a cheque bearing no.189183 dated 05.01.2019 for a sum of Rs.32,73,143/-. However, the said cheque got dishonoured by the Drawer Bank on 17.01.2019 with the reason "Funds Insufficient".

Reiterating the above averments, the counsel for the Petitioner/Operational Creditor prayed to admit the matter.

10. Heard both sides, and perused the records.

11. It is the case of the Petitioner that it had supplied various chemicals to the Corporate Debtor under various invoices during the period 05.05.2018 to 06.07.2018 for which an amount of Rs. 93,82,003/- was due and payable by the Corporate Debtor. Respondent in its counter nowhere declined the receipt of the

said chemicals, however, the Corporate Debtor has raised a dispute regarding the quality of the goods supplied under two invoices dated 05.05.2018.

12. With regard to the contention of the Corporate Debtor, this Adjudicating Authority observes that the Corporate Debtor has not raised any such dispute in reply to the Demand notice issued by the Operational Creditor and instead chose not to reply to the said demand notice. Further, the reliance placed by the Corporate Debtor with regard to the quality of goods in its email dated 11.02.2019, is subsequent to the issuance of demand notice u/s. 8 of IBC, 2016 dated 22.10.2018. Further, this Adjudicating Authority observe that the Corporate Debtor has failed to place any documents to show any pre-existing dispute between the parties, either with reference to the two invoices referred above or with reference to other invoices as enlisted at para 2(a) (iii) to 2(a) (xiii) above.

13. Further, this Adjudicating Authority is satisfied with the submissions put forth by the Petitioner/Operational Creditor regarding existence of 'Operational debt' and occurrence of 'default'. Further, the Operational Creditor has fulfilled all the requirements as contemplated under IB Code in the present Company Petition. However, no name of Resolution Professional has been proposed in terms of provisions of section 9(4) of the Code. In view of the above, this Adjudicating Authority is inclined to admit the petition.

14. The instant petition is hereby admitted and this Adjudicating Authority Orders the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed as per the time line stipulated in section 12 of the IB Code, 2016, reckoning from the day this order is passed.

15. Since no name of IRP is proposed by the Operational Creditor, this Adjudicating Authority hereby appoint Mr. Addanki Venkata Sai Krishnamohan as IRP, from the list provided by IBBI. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of I&B Code,

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2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

16. This Adjudicating Authority hereby declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit 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) 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 Securitisation and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

    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.

17. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

18. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

19. The Petitioner/Operational Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate

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Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

20. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

21. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.

22. The address details of the IRP are as follows:-

Mr. Addanki Venkata Sai Krishnamohan,
IBBI/IPA-001/IP-P00521/2017-18/10946,
Flat No.402, Bhaskar Enclave, Road No.7,
Nagarjuna Nagar, Srinagar Colony,
Hyderabad – 500073.
Cell. No.8008705290
Email: avskmohan@gmail.com

23. The present Petition bearing CP (IB) No. 194/09/HDB/2019 is hereby admitted.

29.11.19

Dr. Binod Kumar Sinha
Member Technical

K. Anantha Padmanabha Swamy
Member Judicial

Rathi/Rk