

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH – 1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON  
10-01-2022 AT 10:30 A.M. THROUGH VIDEO CONFERENCE.

**CP(IB) No. 435/9/HDB/2020**  
U/s 9 of IBC, 2016

**IN THE MATTER OF:**

Vasavi Traders

**...Operational Creditor**

Vs

Piyush Pharmachem (India) Pvt Ltd

**...Corporate Debtor**

**C O R A M:-**

DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)  
SH. VEERA BRAHMA RAO AREKAPUDI, HON'BLE MEMBER (TECHNICAL)

**ORDER**

**Order pronounced in CP(IB) No. 435/9/HDB/2020 vide separate sheets. In the result, this petition is admitted and Corporate Insolvency Resolution Process (CIRP) is ordered against the Corporate Debtor.**



sdlr

Srinivas



sdlr

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

**CP(IB) No.435/9/HDB/2020**

**under Section 9 of Insolvency & Bankruptcy Code, 2016  
r/w Rule 6 of I & B (AAA) Rules, 2016**

**In the matter of:**

Kolluru Venkatesh  
(M/s. Vasavi Traders)  
4-6-36/38, Shop No.3  
1<sup>st</sup> Floor, East Face, Pan Bazar  
Secunderabad – 500 003, Telangana

.... Operational Creditor

**Vs.**

M/s. Piyush Pharmachem (India) Private Limited  
Having its Registered Office at 10/11  
Pan Bazar, Ranigunj  
Secunderabad – 500 003, Telangana

Also at:  
Survey No.263, D-134 & 135, Phase-III  
IDA, Jeedimetla  
Hyderabad – 500 055

... Corporate Debtor

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**Coram:**

Hon'ble Dr. Venkata Rama Krishna Badarinath Nandula, Member (Judicial)  
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

**Appearance:**

For the Petitioner : Mr. Dishit Bhattacharjee, Advocate

For the Respondent : Mr. Puttaparthi Jagannaiah,  
Mr. A. Nagaraj Kumar, Advocates

[ Per: Bench ]

**ORDER**

- I. This is a Petition, filed by the Operational Creditor 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 against the Corporate Debtor, alleging that the Corporate Debtor had failed in discharging the debt of an amount of Rs.1,28,45,967/- (Rupees One Crore Twenty Eight Lakhs Forty Five Thousand Nine Hundred and Sixty Seven only) which includes Principal of Rs.82,82,762/- and interest of Rs.45,63,205/- (interest @ 24% per annum from the date of invoice to till the date of Demand Notice .
  
- II. The gist of the petitioner's case is:
  - i. Mr. Kolluru Venkatesh (M/s. Vasavi Traders) hereinafter referred to as 'Operational Creditor' is engaged in the business of sale of chemicals and its allied products. M/s. Piyush Pharmachem (India) Private Limited, hereinafter referred to as 'Corporate Debtor' is engaged in the business of trading and supplying of industrial and pharmaceutical chemicals.

- ii. According to the Purchase Orders raised by the Corporate Debtor, the Operational Creditor supplied the material and issued Tax Invoices from time to time, which are filed as Annexure-3 at page nos. 34 to 97 of the application. The Corporate Debtor has received the chemicals supplied by the Operational Creditor and acknowledged the receipt of the same. When the Corporate Debtor failed to make the payment after constant and rigorous follow up, the Operational Creditor got issued a Demand Notice dated 20.01.2020 in Form-3 by demanding to pay the total debt amount of Rs.2,14,20,762/- which includes principal amount of Rs.1,56,88,177/- and interest @ 24% per annum of Rs.57,32,585/-.
- iii. It is averred that after receiving the demand notice, some payments were made by the Corporate Debtor. The Operational Creditor once again got issued a Demand Notice dated 14.09.2020 in Form-3 by demanding to pay the total debt amount of Rs.1,28,45,967/- which includes principal amount of Rs.82,82,762/- and interest @ 24% per annum of Rs.45,63,205/-. The detailed calculation sheet is filed as Annexure-2 at page no.131 of the application.
- iv. The Operational Creditor filed a Certificate issued by DCB Bank Limited, Secunderabad, stating that DCB Bank Ltd. has not received any money from the Corporate Debtor for the period from 17.07.2020 to 11.11.2020 along with Bank Statement. Copies of the Certificate and Bank Statement are filed at page nos. 98 to 119 of the application.

- v. It is averred that the outstanding amount due to the Operational Creditor has never been disputed by the Corporate Debtor in any manner whatsoever. It is averred that as the demand notice dated 14.09.2020 since not complied with by the Corporate Debtor, the Operational Creditor was left with no option except to file the instant petition.

III. The gist of the Counter in brief -

- i. It is averred that the application filed by the Operational Creditor is liable to be dismissed at the threshold as the application is incomplete and also approached this Hon'ble Tribunal by suppressing various material facts.
- ii. The allegations and averments made by the Operational Creditor in the application are denied as false, frivolous and vexatious except those that are specifically admitted herein.
- iii. It is averred that the Operational Creditor vide initial Demand Notice dated 20.01.2020 claimed a total debt amount of Rs.2,14,20,762/- against the Tax Invoice nos. from 026 dated 15.05.2018 to 184, dated 16.10.2018, whereas the total sum of tax invoices works out to Rs.2,63,87,686/-. List of Invoices is filed as Annexure-1A of the Counter.

- iv. It is also averred that after receipt of the Demand Notice, the Corporate Debtor paid the total debt amount of Rs.2,53,99,509/- for the period from 21.06.2018 to 16.07.2020 except a balance amount of Rs.9,88,177/- which is filed as Annexure-2A of the Counter,
- v. It is averred that the Operational Creditor, vide 2<sup>nd</sup> Demand Notice dated 14.09.2020 wrongly claimed the debt amount as Rs.1,28,45,967/- for the Tax Invoices from 116 to 184 inclusive of 24% per annum whereas the total amount due is barely Rs.9,88,177/-. Due to Covid, the concerned officials of the Corporate Debtor could not respond to the 2<sup>nd</sup> demand notice.
- vi. It is averred that the Operational Creditor with a *malafide*, intention filed the present application escalating the wrong total amount of debt to overcome the threshold limit of Rs.1.00 crore u/s 4 of IBC that too when Sec.10A IBC is in force.
- vii. It is averred that the Application is liable to be dismissed as '*A sole proprietorship firm is not a legal entity which can sue or be sued in its own name*'.
- viii. It is averred that the Operational Creditor intentionally obtained Certificate dated 11.11.2020 from DCB Bank exclusively for the period starting from 17.07.2020 to 11.11.2020, whereas the last

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payment received by the Operational Creditor from the Corporate Debtor is 16.07.2020.

- ix. It is averred that the instant application is liable to be rejected since the Operational Creditor has intentionally avoided to mention 'the date on which the default occurred' in the mandatory column of Part-IV of Form-5.
- x. It is also averred that the Operational Creditor concealed the details of payments received from the Corporate Debtor by making a mere passing remark i.e. '*That after receiving the notice, some payments were made*'.

IV. The gist of the Rejoinder in brief -

- i. It is averred that during the course of business, the Operational Creditor raised tax invoices for an amount of Rs.2,63,87,685/-for the supplies made till 12.11.2018. The details are as follows:

Description	Amount (Rs.)
Supplies made till 12.11.2018	2,63,87,685/-
Payment received from Corporate Debtor till 12.11.2018	(-) 1,06,99,509/-
Outstanding as on 12.11.2018	1,56,88,176/-
Interest as on 20.01.2020	57,32,585/-
Total dues as on 20.01.2020	2,14,20,761/-

- ii. It is averred that the Corporate Debtor failed to reply to either of the aforementioned Demand Notices. The Corporate Debtor made half of the total debt amount after receipt of the first demand notice dated 20.01.2020 and the outstanding debt amount stood at Rs.1,28,45,967/-. It is also averred that the Current Account of Operational Creditor with the DCB Bank clearly shows that the account has not received any money from the Corporate Debtor from 17.07.2020 to 11.11.2020.
- iii. It is averred that the cause of action first arose in 2018 when the tax invoices were first issued by the Operational Creditor against the transaction with the Corporate Debtor and is continuing till today. Since the default in the present case occurred in 2018, i.e. pre-amendment, hence the required threshold limit under Section 4, IBC to file the present application being Rs.1,00,000/- the application is maintainable. The Operational Creditor relied on the Order passed by the *Hon'ble NCLAT, New Delhi in Madhusudan Tantia vs. Amit Choraria and Foseco India Ltd. in Company Appeal (AT) (Insolvency) No.557 of 2020, which is shown at page no.6 to 8 of the Rejoinder.*

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- iv. It is averred that the present application was initially filed in the name of 'Vasavi Traders'. But on 15.03.2021, an IA 134/2021 was filed for Amendment of Cause Tile as "Kolluru Venkatesh (M/s. Vasavi Traders) in place of M/s. Vasavi Traders, which was allowed and disposed of by this Adjudicating Authority on 02.07.2021.
- v. It is also averred that in their counter, the Corporate Debtor has accepted liability to the extent of Rs.9,88,177/- which fulfils the requirement stipulated by Section 4 of IBC. Hence, the question of wrongly claiming the interest to circumvent the threshold limit does not arise, since the Corporate Debtor himself accepted the liability to the tune of Rs.9,88,177/- that the interest of 24% per annum is calculated as per the terms which were agreed upon by the parties.
- vi. It is averred that the Corporate Debtor vide its e-mail dated 22.05.2018 stated that it is ready to pay Rs.10,73,561/- if the Petitioner confirms that after this payment no amount against interest or any other thing would remain due from the side of the Corporate Debtor. This cannot amount to a pre-existing dispute as it has been raised after the Demand Notice was served under Section 8 of IBC. Since an amount of Rs.10,73,561/- is already admitted by both the sides, there is no dispute in the present petition under Section 5(6) of IBC.

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- vii. It is averred that the Corporate Debtor in their counter nowhere denied the transaction or the acceptance of the goods to their full satisfaction, only the due amount which has been contested by the Corporate Debtor. It is also averred that for an Operational Creditor to file an application to initiate CIRP against the Corporate Debtor under Section 9 of IBC, the only requirement is existence of debt. Reliance has been placed on the Order passed by the *Hon'ble National Company Law Tribunal, Mumbai Bench in Hermes Travel & Cargo Private Limited vs. Goodrich Logistics Private Limited in CP2315/IBC/NCLT/MAH/2018*, where in reliance was placed on the ruling of Hon'ble NCLAT, in *The Dhar Textile Mills Ltd. vs. Asset Reconstruction Company (India) Ltd. Company Appeal (AT) (Insolvency) No.11 of 2019*".

"...it is clear that the Adjudicating Authority is not required to decide mismatch of 'debt' occurred in one place or the other place and the mis-match of 'debt' cannot be a ground to reject the claim if the amount is due more than Rupees One Lakh and there is a 'default'. Under Section 7(5), the Adjudicating Authority is to be satisfied that a 'default' has been occurred. If the 'debt' is more than Rupees One Lakh, then the Adjudicating Authority is required to admit the application, except where there is defect, which can be removed within seven days from the date of receipt of the notice from the Adjudicating Authority. The Corporate Debtor may only take plea that the default has not occurred in the sense that debt which has also includes 'disputed claim' is not due, a 'debt' may not be due, if it is not payable in law or in fact".

- V. In the back drop of the contentions put forth by both sides, the Tribunal has framed the following Points for consideration.
1. Whether there is an "Operational Debt" as defined exceeding Rs.1 lakh?

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2. Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
  3. Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?
- VI. We have heard the Learned Counsels for both parties, perused the documents, written submissions and Case Laws.
- VII. Point 1:

Whether there is an “Operational Debt” as defined exceeding Rs.1 lakh?

At the outset, it may be stated that the *onus*, is on the Operational Creditor herein to establish the existence of an Operational Debt in favour of the Operational Creditor payable by the Corporate Debtor exceeding Rs.1.00 lakh.

Learned Counsel for the Applicant submitted that the amount of Rs.2,14,20,762/- being the outstanding due, the same has been demanded under two separate demand notices dated 20.01.2020 and 14.09.2020 respectively.

On the other hand, Learned Counsel for the Corporate Debtor contended that the present claim which is based on two separate demand notices is not sustainable, and that the entire amount claimed as payable under the invoices being a sum of Rs.2,63,87,686/-, and out of which, the

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Corporate Debtor has paid an amount of Rs. 2,53,99,509/-. Therefore, the amount left being only a partly amount of Rs.9,88,177/-, CIRP cannot be initiated against the Corporate Debtor.

From the submissions above it is quite clear that, even as per the Corporate Debtor. as against the claim of debt of Rs.2,63,87,686/-, the Corporate Debtor has paid an amount of Rs. 2,53,99,509/-, and the debt amount left is Rs.9,88,177/-. This admission is sufficient hold that the debt involved in this application certainly exceeds Rs.1 lakh.

VIII. Point 2:

Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?

According to the Ld. Counsel for the Applicant, pursuant to the Purchase Orders raised by the Corporate Debtor, the Operational Creditor supplied the material and issued Tax Invoices from time to time, which are filed as Annexure-3 at page nos. 34 to 97 of the application. The Corporate Debtor has received the chemicals supplied by the Operational Creditor and acknowledged the receipt of the same. When the Corporate Debtor failed to make the payment after constant and rigorous follow up, the Operational Creditor got issued a Demand Notice dated 20.01.2020 in Form-3 by demanding payment of debt amount of a sum of Rs.2,14,20,762/- which includes principal amount of Rs.1,56,88,177/- and interest @ 24% per annum of Rs.57,32,585/- The Corporate Debtor had not replied to any of these two notices, as

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such, the debt claimed by the Operational Creditor stands admitted. Since the admitted debt has not been discharged in full, it is a fit case to order initiation of CIRP against the Corporate Debtor.

- IX. Learned Counsel for Operational Creditor also invited our attention to the Counter filed by the Corporate Debtor wherein the Corporate Debtor has stated that the Operational Debt in this case was Rs.2,63,87,686/- and the Corporate Debtor has paid a sum of Rs. 2,53,99,509/- leaving only a sum of Rs.9,88,177/- and submitted that the said plea in the counter amounts to admission of liability besides default in repayment of the debt, as such, it is not open to the Corporate Debtor to now contend *contra*.
- X. Per contra, Learned Counsel for the Corporate Debtor, at the outset contended that the present claim which is based on two separate demand notices is not sustainable, *nextly*, it is contended that the amount payable under the invoices is only a sum of Rs.2,63,87,686/-. Out of which, an amount of Rs. 2,53,99,509/- paid, hence a sum of Rs.9,88,177/-, only has been left, as such, CIRP cannot be initiated against the Corporate Debtor.
- XI. Having, heard the Learned Counsels for both sides and on perusal of record, it is to be stated that the present proceedings not being the proceedings *for recovery but proceedings for initiation of CIRP* against the Corporate Debtor, upon the Operational Creditor establishing existence of a *legally enforceable debt* payable by the corporate debtor and default in payment of the sum by the corporate debtor. So much so,

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it is not within the domain of this Tribunal to make any enquiry on quantity of the debt. Suffice if the AA is able to find debt claimed as due exceeds Rs.1.00lakh rupees. Reliance in this regard can be placed on the following ruling:

The Dhar Textile Mills Ltd. vs. Asset Reconstruction Company (India) Ltd. Company Appeal (AT) (Insolvency) No.11 of 2019”, by Hon’ble NCLAT,

“...it is clear that the Adjudicating Authority is not required to decide mis-match of ‘debt’ occurred in one place or the other place and the mis-match of ‘debt’ cannot be a ground to reject the claim if the amount is due more than Rupees One Lakh and there is a ‘default’. Under Section 7(5), the Adjudicating Authority is to be satisfied that a ‘default’ has been occurred. If the ‘debt’ is more than Rupees One Lakh, then the Adjudicating Authority is required to admit the application, except where there is defect, which can be removed within seven days from the date of receipt of the notice from the Adjudicating Authority. The Corporate Debtor may only take plea that the default has not occurred in the sense that debt which also includes ‘disputed claim’ is not due, a ‘debt’ may not be due, if it is not payable in law or in fact”.

XII. Hon’ble Supreme Court of India, in *Innoventive Industries Ltd. v. ICICI Bank & Anr.* (Civil Appeal Nos.8337-8338 of 2017), held that

“On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”(Emphasis is ours).

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XIII. Therefore, the existence of operational debt payable by the Corporate Debtor, based on the undisputed invoices stands established. Admittedly, it is not the case of the Corporate Debtor that the entire debt has been discharged. Though it is imperative on the part of the corporate debtor to establish existence of a dispute regarding the item supplied/services rendered existing prior to the issuance of Demand Notice or pendency suit or other proceedings against the Corporate Debtor in respect of the same subject matter before issuance of Demand Notice, in order to get over from the likely CIRP process, the Corporate Debtor in this case failed to show existence of any such prior dispute.

XIV. Therefore, viewed from all angles, we have no hesitation to hold that the operational creditor has established unequivocally existence of a legally enforceable debt payable by the corporate debtor, which it failed to pay. This point is answered accordingly.

XV. Point 3:

Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

As already stated, it is a case of dispute as to the quantum of debt and not as to the existence of an operational debt payable by the corporate debtor. Indisputably, it is not the case of the Corporate Debtor that a dispute between the Operational Creditor regarding the item

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supplied/services rendered has been existing prior to the issuance of Demand Notice or that a suit or other proceedings were filed before receipt of the Demand Notice in respect of the unpaid Operational Debt. So much so, we hold that there exists an Operational Debt default in repayment by the corporate debtor has been established.

This point is answered accordingly.

XVI. Therefore, in the light of our discussion on the points above, on consideration of the submissions made, on perusal of the record and the written submission, we firmly hold that, it is a fit case to order initiation of CIRP against the Corporate Debtor.

XVII. The Operational Creditor has not named anyone as Interim Resolution Professional (IRP) and has requested this Adjudicating Authority to appoint one for the Insolvency Resolution Professionals as IRP. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period from January 1, 2022 to June 30, 2022 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr. Srinivasa Rao Ravinuthala, having Registration No. IBBI/IPA-003/IP-N00081/2017-18/10704, e-mail: [cma.ravisrao@gmail.com](mailto:cma.ravisrao@gmail.com) as Interim Resolution Professional. As per the IBBI website, his AFA is valid upto 30.11.2022.

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The aforesaid IRP has no disciplinary proceedings pending against him. He shall file his written communication and all relevant papers immediately before the Registrar of this Adjudicating Authority but not later than three days.

XVIII. 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 the following directions: -

- i. 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.
- ii. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator

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or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

- iii. 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.
- iv. 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.
- v. That the order of moratorium shall have effect from the date of this Order 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.
- vi. The Petitioner is directed to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the Interim Resolution Professional within three days from the date of this Order to meet out the expenses and his fee to perform the functions assigned to him in accordance with Regulation 6 of IBBI (Insolvency Resolution Process for Corporate

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Person) Regulations, 2016. The initial expenditure incurred by IRP shall, however, be subject to the approval by the Committee of Creditors, in its first meeting.

- vii. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- viii. Accordingly, this Petition is admitted.
- ix. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of Corporate Debtor herein on the MCA-21 site of Ministry of Corporate Affairs.

Sd/-

MDI Dr.N.

Sd/-

ARINATH

Syamala