

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-I, HYDERABAD**

CP(IB) No. 87/9/HDB/2024

*(Under section 9 of the Insolvency and Bankruptcy Code, 2016 read with
Rule 6(1) of the Insolvency and Bankruptcy (AAA) Rules, 2016)*

**IN THE MATTER OF VIVIN DRUGS & PHARMACEUTICALS
LIMITED**

Between:

M/s. Sanchi Fine Chem Corp,
Rep by its Partner Mr. Karun Kumar Agarwal
O/o MCH No. 1-2-137 to 154 and 1-2-219 to 234,
Minerva Commercial Complex, Shop No. 25,
SD Road, Secunderabad- 500003

...Petitioner /Operational Creditor

Verses

Vivin Drugs & Pharmaceuticals Ltd.
Rep by its Managing Director
Formerly known as Eytan Lbs Limited
CIN No. U24232TG2011PIC075704

Corporate Office

O/o H.No. 8-2-293/82/A/234&235, TF- 1, 3rd floor,
Empire Square Road No. 36, Jubilee Hills,
Hyderabad-500033.

Registered office

No. 2A & 3A, New MLA & MPs Colony,
Road No. 10C, Jubilee Hills, Hyderabad-500033.

Factory

Plot No. 3/42, Survey Nos. 10& 10D,
Model industrial Estate, Gaddpotharam Village,
Khazipally, Jinnaram Mandal, Sangareddy District,
Telangana- 502025

...Respondent/Corporate Debtor

Date of order: 11.11.2024



Coram:

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri Charan Singh, Hon'ble Member (Technical)

Appearance:

For Petitioner : Mr. V. Appa Rao, Advocate
For Respondent : Ms. G. Sumathi, Advocate

**PER: BENCH
ORDER**

This Company Petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 by M/s. Sanchi Fine Chem Corp, for 'short', the Operational Creditor, seeking initiation of Corporate Insolvency Resolution Process (CIRP) against the respondent Vivin Drugs & Pharmaceuticals Ltd, for 'short' the Corporate Debtor, claiming that the Corporate Debtor defaulted in making payment of a sum of Rs. 3,66,91,729/- (Rupees Three Crore Sixty-Six Lakhs Ninety-One Thousand Seven Hundred and Twenty-Nine only) which is due and payable to the Operational Creditor by the Corporate Debtor.

1) The averments in the Petition in brief are:

- 1.1 The operational creditor is a partnership firm and is engaged in the field of sale of chemicals primarily basing on the purchase orders placed by the clients. That the corporate debtor, placed purchase orders dated 04.07.2023 to 27.11.2023 for supply of Glyoxylic Acid, Hexamethyldisilane (HMDS) fresh, Triphosgene, Sodium Boro Hydride, Methylene Di Chloride, Chloroform etc.



- 1.2 As per the purchase orders placed by the corporate debtor, the operational creditor supplied the specified materials to the corporate debtor, issuing tax invoices and e-way bills for each delivery. The corporate debtor acknowledged receipt of the materials by endorsing the delivery challans. Additionally, the operational creditor maintained a ledger account for the corporate debtor. It is stated that despite timely delivery of the materials as per the purchase orders placed by the corporate debtor, it failed to make the necessary payments that the operational creditor was entitled to receive.
- 1.3 The Operational Creditor stated that the said non-payment herein is considered as operational debt amounting to Rs. 3,66,91,729/-, along with interest at the rate of 20% per annum from 01.03.2024, until full payment is made. Due to the non-payment of the dues, the operational creditor issued a demand notice in Form No. 3 & 4 on 17.04.2024, and followed up with an email on 22.04.2024. The said notice was duly served to the corporate debtor on 18.04.2024. However, the corporate debtor did not respond. The failure to do so constitutes non-compliance with the notice dated 17.04.2024, as per Section 8 of the Insolvency and Bankruptcy Code, 2016 (IBC). It is further stated that the corporate debtor did not dispute the receipt of Form No. 3 & 4 on 17.04.2024 neither the existing debt. Hence the debt is ascertained and corporate debtor failed to pay the said debt.
- 1.4 It is lastly stated that due to non-compliance of the notice dt. 17-4-2024 by the corporate debtor, the operational creditor approached this Tribunal by filing the present application.



- 2) **The averments in the Counter in brief are;**
- 2.1 Refuting the allegations made by the operational creditor, the corporate debtor contended that the NCLT cannot be used as a tool or forum for mere

recovery of dues and petitioner is deliberately dragging the corporate debtor into litigation. As a result, the application is devoid of merit and constitutes a strong case for dismissal.

- 2.2 The corporate debtor stated that it is a well-established pharmaceutical company and the promoters of the corporate debtor have been purchasing raw materials from the operational creditor since 2005, which was acknowledged by the operational creditor on multiple occasions. The corporate debtor asserted that it has consistently paid all invoices on time, based on the amounts raised by the operational creditor. It also emphasized that, due to their long-standing relationship, the corporate debtor agreed to favourable prices to account for any financial losses from delayed payments. Furthermore, the operational creditor has not disputed the absence of interest payments, as confirmed by the emails exchanged between the operational creditor and the corporate debtor prior to the filing of the application.
- 2.3 It is stated that the operational creditor claimed that it had supplied materials worth Rs. 3,66,91,729/- to the corporate debtor between July 2023 and December 2023, as per its books of accounts. While so, the corporate debtor acknowledged receiving raw materials, it emphasized that the normal credit period of 120 days for the payment was due between November 2023 and April 2024. However, due to a temporary downturn in its business, the corporate debtor faced cash flow issues and requested an extension until September/October 2024, which the operational creditor verbally agreed to.
- 2.4 Despite this understanding, the operational creditor issued a notice under Section 9 of the IBC 2016 on 17.04.2024, demanding Rs. 3,66,91,729/- plus 20% interest from March 2024. It is stated that the corporate debtor



responded by requesting further time until October 2024, noting efforts to infuse funds and reconcile accounts due to potential quality control issues. The corporate debtor invited the operational creditor to negotiate a settlement, suggesting it could recover more through compromise than by pursuing insolvency, which could harm the business of the corporate debtor. The corporate debtor maintained its willingness to repay as much as possible and argued that the operational creditor had acted hastily and in bad faith by initiating insolvency proceedings.

- 2.5 It is stated that the corporate debtor requested the operational creditor to send its accounting staff for account verification and reconciliation, but the operational creditor deliberately avoided doing so, indicating an intent to create litigation rather than resolving the issue amicably. That actions of the operational creditor are aimed at portraying the corporate debtor as a defaulter to disrupt its business operations and its ability to raise funds. The corporate debtor submitted that minor disputes regarding final payable amounts over quality or quantity of materials are common in long-term business relationships. Nevertheless, the corporate debtor is willing to pay the principal amount, subject to reconciliation, within 120 days starting from the last week of October 2024, and is ready for an amicable settlement.
- 2.6 The corporate debtor argued that admitting this petition would cause severe hardship and injustice to the company, whereas no prejudice would be caused to the operational creditor if the matter is resolved outside the Tribunal.
- 3) The operational creditor filed written submissions reiterated the averments in the company petition.



- 4) Therefore, in the light of the contest put forth as above by both the parties, the point that emerges for our consideration is:

Point.

Whether there is an 'operational Debt' of a sum exceeding rupees one crore, due and payable by the Corporate Debtor to the Operational creditor, if so, whether the Corporate Debtor has defaulted in its repayment?

- 5) We have heard Mr. V. Appa Rao, Learned counsel for the Operational Creditor and Ms. G. Sumathi Learned counsel for the Corporate Debtor and perused the record.

Point.

Whether there is an 'operational Debt' of a sum exceeding rupees one crore, due and payable by the Corporate Debtor to the Operational creditor, if so, whether the respondent has defaulted in its repayment?

The Submissions:

- 6) The learned counsel for the operational creditor submitted that, M/s Sanchi Fine Chem Crop is engaged in a business of selling chemicals and supplied materials to the corporate debtor based on purchase orders issued between 04.07.2023 and 27.11.2023. Despite deliveries being acknowledged, the corporate debtor failed to pay Rs. 3,66,91,729/- along with interest at the rate of 20% per annum from 01.03.2024. Following this delay in payment, the operational creditor issued a demand notice in Form No. 3 & 4 on 17.04.2024, but the corporate debtor did not respond or dispute the debt. Due to this non-compliance, the operational creditor filed an application with the Tribunal under the IBC.

7) **Per contra**, the learned counsel for the corporate debtor refuted the claims putforth by the operational creditor and argued that the application was



merely for debt recovery and should be dismissed. It acknowledged receiving materials but cited a verbal agreement between the operational creditor and corporate debtor for an extension of the payment deadline due to cash flow issues faced by the corporate debtor. The corporate debtor claimed that the operational creditor acted in bad faith by initiating insolvency proceedings despite requests for more time and offers to reconcile accounts. Furthermore, the corporate debtor expressed willingness to settle the principal amount amicably and contended that admitting the petition would unnecessarily harm its business.

Our Analysis and findings:

- 8) Based on the facts presented by both the counsels, it is crucial to assess whether the amount claimed by the operational creditor qualifies as an “operational debt” under the Insolvency and Bankruptcy Code, 2016 (IBC). Section 5(21) of the IBC defines operational debt as:

"A claim in respect of the provision of goods or services, including employment, or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government, or any local authority."

- 9) We observed that, the operational creditor received eleven purchase orders from the corporate debtor on the following dates: 04-07-2023, 06-07-2023, 26-07-2023, 16-08-2023, 27-09-2023, 06-11-2023, 09-11-2023, 16-11-2023, 17-11-2023, 25-11-2023, and 27-11-2023. These purchase orders, issued by the corporate debtor, established a contractual relationship obligating the operational creditor to supply the specified goods mentioned therein. The operational creditor duly performed its obligations by supplying the required chemicals, as evidenced by the issuance of tax invoices on 10-07-2023, 17-07-2023, 18-07-2023, 18-07-2023, 19-07-2023, 26-07-2023, 30-07-2023, 30-07-2023, 12-08-2023, 23-08-2023, 24-



08-2023, 30-08-2023, 12-10-2023, 08-11-2023, 11-11-2023, 12-11-2023, 19-11-2023, 27-11-2023, 22-07-2023, 07-10-2023, and 29-11-2023.

- 10) Further, the corresponding e-way bills were generated for the transportation of goods on 10-07-2023, 17-07-2023, 18-07-2023, 18-07-2023, 19-07-2023, 22-07-2023, 28-07-2023, 30-07-2023, 30-07-2023, 12-08-2023, 23-08-2023, 24-08-2023, 30-08-2023, 07-10-2023, 12-10-2023, 08-11-2023, 11-11-2023, 12-11-2023, 19-11-2023, 19-11-2023, 27-11-2023, 29-11-2023, and 30-11-2023. These documents confirm the supply of the goods as per the contractual agreement between the parties.
- 11) The above facts substantiate the existence of a "claim" for the provision of goods, as contemplated under the contractual relationship between the operational creditor and the corporate debtor. Furthermore, the delivery challans endorsed by the corporate debtor, acknowledging the receipt of the goods establish that the operational creditor fulfilled its part of the agreement by providing the goods, thereby giving rise to a legitimate claim for payment.
- 12) That as per the IBC, debt is defined as a liability or obligation in respect of a claim, which is due from any person. In this case as observed above, the corporate debtor is liable to pay the outstanding amount for the goods received, thereby creating a debt. This is an essential element of operational debt under Section 5(21), as it establishes that the creditor has a valid claim against the debtor for non-payment.

- 13) Thereafter, due to the non-payment of the debt the operational creditor issued a demand notice in Form 3 & 4 dated 17.04.2024 under Section 8 of the IBC, which was duly served on 18.04.2024 as per the tracking report filed by the operational creditor but the corporate debtor did not respond to



the same. In view of the same, the non-payment of the debt by the corporate debtor constitutes a breach of contract, and the unpaid amount remains due and payable. The corporate debtor thus, has committed a default in payment of operational debt which was due and payable.

- 14) In this case, the corporate debtor neither disputed the receipt of the goods nor the existence of the debt and the only submission made by the corporate debtor is that it has sought extension of payment period for the amount due to operational creditor. We further observe that even the extension sought for payment of the operational debt by the corporate debtor i.e. by October-2024, has elapsed.
- 15) We further observe that as per the NeSL certificate furnished by the operational creditor, the status of authentication is recorded as "*Disputed*" and the reason for the same is extracted here under:

*"Debt exists but outstanding amount wrong,
Remark- There were multiple business transactions between the parties. The account needs to be reconciled for marking final payment. Pending reconciliation of the same exact amount of the debt is not accepted."*

- 16) In order to decide whether the amount of the operational debt meets the threshold of Rs. One Crore as per the IBC, we perused the amounts of the invoices that were acknowledged by the corporate debtor. The details of which are produced hereunder:

Date of Tax invoice	Received by the corporate debtor on	Amount
19.07.2023	22.07.2023	11,78,324/-
18.07.2023	19.07.2023	8,75,395/-
17.07.2023	19.07.2023	11,84,342/-



26.07.2023	04.08.2023	11,84,336/-
30.07.2023	01.08.2023	7,02,513/-
30.07.2023	04.08.2023	6,97,309/-
12.08.2023	13.08.2023	7,32,579/-
24.08.2023	30.08.2023	7,97,491/-
12.10.2023	13.10.2023	44,77,805
11.11.2023	-	15,93,000/-
08.11.2023	09.11.2023	14,51,400/-
12.11.2023	13.11.2023	15,93,000/-
18.11.2023	19.11.2023	8,01,963/-
		TOTAL =1,72,69,457/-

It is evident from the above that even if we consider only the invoices which are duly acknowledged by the corporate debtor, the operational debt as claimed by the operational creditor meets the threshold as put forth by IBC.

17) From the above, it is amply clear that there is an amount due more than Rs. 1.00 crore and payable to the operational creditor by the corporate debtor and it has defaulted in repayment of the same. Further, the corporate debtor has not contended and /or placed any material document on record to show any pre-existing dispute between the parties.

18) We are satisfied that the operational creditor has proved its case by placing sufficient evidence and default has occurred for which the corporate debtor is liable to pay. Further, the operational creditor has fulfilled all the stipulations as required under IBC, for the purpose of initiating CIRP. In these circumstances, we are inclined to admit the instant application.



19) Accordingly, the instant application is hereby admitted and we order commencement of the Corporate Insolvency Resolution Process (CIRP) in respect of the corporate debtor herein.

20) Hence, the Adjudicating Authority admits this Petition under Section 9 of I&B Code, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions: -

A) Corporate Debtor, Vivin Drugs & Pharmaceuticals Ltd is admitted in Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016,

B) 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;

C) 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.

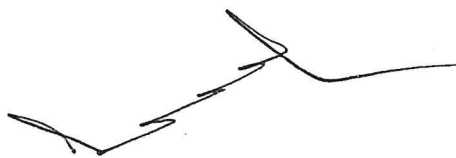


- D) Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under 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.
- E) 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.
- F) 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.
- G) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
- H) That this Bench hereby appoints Mr. Chillale Rajesh, having Registration No. IBBI/IPA-001/IP-P00699/2017-2018/11226 as Interim Resolution Professional, whose contact details are: chillalerajesh[at]yahoo[dot]co[dot]in Address: B-725, Western



Plaza, OU Colony, HS Darga, Manikonda, Hyderabad, Telangana, 500008 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

- I) Proposed IRP shall file Form-2 issued by the IBBI within three days from the date of receipt of this order. This information is also available in IBBI Website. Authorisation for Assignment is valid to 24.10.2024. Thus, there is compliance of Regulation 7A of IBBI (Insolvency Professionals) Regulations, 2016, as amended. Therefore, the proposed IRP is fit to be appointed as IRP since the relevant provision is complied with.
- J) The Registry is directed to furnish certified copy of this order to the parties as per Rule 50 of the NCLT Rules, 2016.
- K) The petitioner is directed to communicate this order to the proposed Interim Resolution Professional.
- L) The petitioner is directed to pay a sum of Rs.1,00,000/- to the interim resolution professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of IBBI regulation, 2016.
- M) Registry of this Tribunal is directed to send a copy of this order to the Registrar of Companies, Hyderabad for marking appropriate remarks against the Corporate Debtor on website of Ministry of Corporate Affairs as being under CIRP.



N) Accordingly, this Petition is allowed. However, there is no order as to costs.

O) In the result this company petition is admitted. No order as to Costs.


11.11.2024
Sh. Charan Singh
Member (Technical)

Bhargavi Kinhalkar




11.11.24
Dr. Venkata Ramakrishna
Badarinath Nandula
Member (Judicial)


12/11/24
Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER... (F(67) No. 87/9/HDB/24
निर्णय का तारीख
DATE OF JUDGEMENT... 11/11/24.
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