

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH-1, HYDERABAD**

**CP(IB)No.361/7/HDB/2020  
U/s.7 of the I & B Code, 2016  
r/w Rule 4 of the I & B (AAA) Rules, 2016**

**In the matter of:**

Zydus Healthcare Limited  
Having its Registered Office at  
'Zydus Tower', Satellite Cross Roads  
Ahmadabad – 380 015

... Petitioner/Financial Creditor

**Vs.**

Genesys Biologics Private Limited  
Having its Registered Office at  
6-3-248/1/1/A, 4<sup>th</sup> Floor, Bhaskar Plaza  
Road Number 1, Banjara Hills  
Hyderabad – 500 034

...Respondent/Corporate Debtor

**Date of Order: 17.03.2021**

**Coram:**

Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)  
Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

**Parties / Counsels Present**

For the Petitioner : Mr. Vivek Sarin and Mr. P. Vikram  
Counsels for the Financial Creditor

For the Respondent : Mr. Praveen Nair, Advocate

**Per: Veera Brahma Rao Arekapudi, Member (Technical)**

**Heard on:** 14.12.2020, 23.12.2020, 13.01.2021, 27.01.2021, 17.02.2021



**ORDER**

The present petition is filed by M/s. Zydus Healthcare Limited / Financial Creditor alleging that M/s. Genesys Biologics Private Limited/Corporate Debtor had defaulted in repaying a sum of Rs.12,41,50,950.96 (Rupees Twelve Crores Forty-One Lakhs Fifty Thousand Nine Hundred Fifty and paise ninety-six only) which includes principal loan amount of Rs.10,00,00,000/- (Rupees Ten Crores only) and a compound interest of Rs.2,41,50,950.96 calculated @ 12% per annum from 03.10.2018 to 20.08.2020. **A Ledger Account of Loan given to M/s. Genesys Biologics Private Limited for the period from 03.10.2018 to 20.08.2020 is shown at page 10 of the application.**

This petition is filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**I&B Code**”), R/w Rule 4 of the Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the petition and initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Genesys Biologics Private Limited granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

1. The averments made by the Financial Creditor in the Company Petition in brief are described hereunder:
  - i. **M/s. Zydus Healthcare Limited / Financial Creditor** is one of India’s leading pharmaceutical company incorporated under the provisions of the Companies Act, 1956 with CIN: U24230GJ2016PLC085929, having its Registered Office at Zydus Corporate Park, Nr. Vaishnodevi Circle, S.G. Highway, Ahmedabad – 382 481. **M/s. Genesys Biologics Private Limited/Corporate Debtor** is a Private Limited



Company incorporated on 18.11.2014 under the provisions of the Companies Act, 2013 with CIN No.24232TG2014PTC096432. The Corporate Debtor is engaged in the business of manufacturing insulin biosimilars and falls under the jurisdiction of this Hon'ble Tribunal.

- ii. It is averred on 28.09.2018, a Business Loan Agreement (“BLA”) was entered into between the parties i.e., Zydus Healthcare Limited/Financial Creditor/Applicant herein, Genesys Biologics Private Limited/Corporate Debtor/Respondent herein, Personal Guarantors, and Corporate Guarantor, M/s. Amicus Formulations (India) Private Limited. A copy of the BLA is marked as **Annexure A-4** of the application. On the basis of the terms and conditions set out in the BLA, the Financial Creditor advanced a loan of Rs.10.00 crores @ 12% interest compounded annually from the date of disbursement of the loan amount until the actual date of full recovery including all liability towards interest, which was to be repaid in full by 15.01.2019. A copy of Bank Statement evidencing the remittance of Rs.10.00 crores as Financial Debt is marked as **Annexure A-5**.
- iii. It is averred for the purpose of securing the loan amount, a Deed of Corporate Guarantee was executed in favour of the Financial Creditor by Amicus Formulation (India) Pvt. Ltd./Corporate Guarantor. Besides, a separate Deed of Personal Guarantee was also signed by five persons, who are also directors of the Corporate Debtor, namely – 1. Mr. Rajendra Rao Juvvadi; 2. Mr. Vamshider Rao Joganpally; 3. Mr. Venkat Reddy Yelma, 4. Mr. Venkata Krishna Rao Dasari; and 5. Mr. Tulsi Ramu Chatadi (“Personal Guarantors”).

- iv. It is averred that the BLA was amended on three occasions viz. 14.01.2019, 01.04.2019 and 01.06.2019. The copies of the amendments in BLA are marked as **Annexure A-6 (Colly.)**. On 01.06.2019, the repayment date was extended till 30.09.2019.
- v. It is averred that the Corporate Debtor committed default in repayment of loan amount on 30.09.2019 under the provisions of Clause 7 of BLA and is still subsisting. Instead of making the repayment, the Corporate Debtor sent out a misconceived email on 09.06.2020, calculated to cause subterfuge under the garb of Ordinance dated 05.06.2020. The email initiated by the Corporate Debtor is unwarranted.
- vi. It is averred that the Financial Creditor insisted upon repayment along with interest as per the provisions of BLA vide emails dated 26.06.2020 and 13.07.2020. The copies of the emails dated 09.06.2020, 26.06.2020 and 13.07.2020 along with letter of even date exchanged between the parties are marked as **Annexure-A-7** of the application. The Corporate Debtor through e-mail dated 20.07.2020 and 21.07.2020 requested the Financial Creditor for accommodation in repayment of loan amount. Copies of the same are marked as **Annexure-A-8 (Colly.)**. In all the communication, Corporate Debtor admitted the repayment liability of loan amount along with interest as per the terms of BLA.
- vii. It is also averred that there is no dispute of financial debt pending between the Financial Creditor and the Corporate Debtor.



- viii. It is averred that the Corporate Debtor did not make any repayment of principal and the interest amount towards the discharge of financial debt of Rs.12,41,50,950.96 till the date of filing the application. Therefore, the Financial Creditor has left with no choice except filing this petition under Section 7 of Insolvency & Bankruptcy Code, 2016.
2. The averments in the Counter Affidavit filed on behalf of the Respondent are briefly described hereunder:
- i. The Respondent denies all the averments made by the Petitioner except those which are specifically admitted herein and submits that the application filed under Section 7 of the I&B Code ought to be rejected in limine as the same is filed by misrepresenting and suppressing facts and is not maintainable under law.
  - ii. It is averred that the Company Petition is filed by an unrelated Corporate Entity. In the Company petition, all the documents of lender, M/s. Zydus Healthcare Limited / Financial Creditor is represented by Mr. Anil Matai in the capacity of Managing Director and Mr. Sanjay Kumar Gupta in the capacity of Company Secretary having CIN:U51900GJ1989PLC079501 whereas the subject Company Petition is filed by a Corporate Entity having CIN U24230GJ2016PLC085929 as evident from the Form-I filed to initiate Corporate Insolvency Resolution Process against the Respondent and where Mr. Anil Matai is not a Managing Director. It is averred that on perusal of the Master Data of the Petitioner, it is revealed that the Petitioner Company is presently is not in existence and it is amalgamated. A copy of the Master Data of lender, M/s. Zydus Healthcare Limited having CIN: U51900GJ1989PLC079501 and a copy of Master Data of the Petitioner from Ministry of Corporate



Affairs website are enclosed as **Annexure-R1 & R2** respectively.

- iii. It is averred that the Respondent herein does not have relation with the petitioner herein and the present petition is instituted without any locus standi and is liable to be dismissed in limine with exorbitant cost for wasting the precious time of this Hon'ble Tribunal and of the Respondent and averred that no debt whatsoever is due by the Respondent to the Petitioner.
- iv. It is averred that the petitioner refers to its Goods and Service Tax Identification Number (GSTIN) as 29AAACG1895QIZU and the Address is based in Ahmedabad. The GSTIN is of the entity registered in the State of Karnataka as the GST registration is state wise and it has no relation with the Respondent or the subject matter pleaded in the company petition and the present petition is filed by misrepresenting its identify/to extort money from the Respondent with an intention to file multiple demands from different corporate entities and the present petition is liable to be dismissed solely on the above ground.
- v. It is averred that the present Petition is filed on or after 03.10.2020 as evidenced from the notary stamp on the verification affidavits at page nos.25 and 27 of the application. It is also averred that as per Insolvency & Bankruptcy (AAA) (Amendment) Rules, 2020, any company petition filed on or after 24.09.2020, the Financial Creditor is required to serve a copy of the petition to Insolvency and Bankruptcy Board of India and enclose the proof of service but it does not appear to have been therefore the present petition is not maintainable.

- vi. It is averred that the petitioner herein has filed an application for initiating insolvency proceedings against the Corporate Debtor / M/s. Amicus Formulations India Private Limited bearing CP(IB) 362/7/HDB/2020 and the same is pending before the NCLT, Hyderabad Bench-II. It is also averred that the parallel proceedings of the Corporate Debtor and Corporate Guarantor before two different adjudicating authorities for the same debt is not acceptable under law.
- vii. It is averred that the subject company petition is misleading and is filed by suppressing material information and no default of loan as alleged in the subject company petition.
- viii. It is averred that the Respondent and the parent company of the Petitioner, M/s. Cadila Healthcare Limited had discussions for a proposed investment and a letter of intent being exchanged on 24.03.2017, which ultimately culminated into a term sheet dated 02.07.2018 containing the principal terms for investment into Respondent. A copy of the term sheet is shown as **Annexure-R4**. As per the Term Sheet, the Respondent is valued at Rs.475 crores and the Petitioner herein has agreed to invest Rs.203.57 crores by subscribing 30% of the equity stake in Respondent. The conditions precedent for the investment is that a Subscription Agreement and Shareholder's Agreement is executed between Respondent and parent company of the petitioner and the said investment would be used for operational expenses and for construction of insulin biosimilar manufacturing facilities and conduct clinical trials to get approval of the Company's products in different markets.



- ix. It is averred that vide emails dated 03.08.2018 and 16.08.2018, the parent company of the petitioner has shared the Subscription Agreement and Shareholders Agreement establishing the intention to go forward with the investment promised by the parent company of the petitioner. Based on the assurance, the Respondent has invested considerable amount of money. An extract of the e-mail dated 13.04.2019 is shown at page nos. 4 to 7 of the counter.
- x. It is averred that the parties have agreed that there would be considerable delays vide e-mail dated 28.05.2019. A copy of the same is enclosed as **Annexure-R7**.
- xi. It is averred that the loan of Rs.10 crores demanded by the petitioner is an amount received subsequent to successful signing of term sheet during the course of negotiation of the terms of the proposed investment into Respondent's operations. It is averred that the Petitioner's scientific & technical team carried out physical due diligence with respect to the scientific and technical aspects of Respondent's operations. It is also averred that considering the fund deficit to execute this precedent, the Petitioner granted a loan of Rs.10 crores to Respondent towards the above said end uses and pursuant thereto the Business Loan Agreement dated 28.09.2018 was entered.
- xii. It is averred that the parties never intended for the BLA to be enforced as a plain loan. Moreover, Respondent required the said sum of Rs.10 crores and sought from Petitioner to finance the same, notwithstanding the fact that the requirement was in lieu of Petitioner's approach towards process optimization and establishing the titer, reaffirms the



fact that the subsequent actions were undertaken only as a consequence and with an understanding that the amount along with interest will get adjusted against the Equity Investment in the future.

- xiii. It is also averred that there is no default in the loan as the expense undertaken by the Respondent is at the instance of the Petitioner and the BLA was entered with an intention to set off against the investment of Rs.230 crores in Respondent and when there was no further interest shown by the Petitioner in investment, it was agreed that the loan is not required to be paid for a reasonable time until an alternate suitable investor invests in Respondent. Due to Covid-19 pandemic, it has taken a longer time for the Respondent to find a suitable alternative investor. It is averred that presently no debt is due.
- xiv. It is averred that the Business Loan Agreements and Deed of Guarantee cannot be relied upon as the same are insufficiently stamped.
- xv. It is averred that the Petitioner has by its own admission extended the due date for repayment of the loan amount to 07.07.2020. Pursuant to the said extension of the due date, for the first time a demand notice for repayment of loan was sent to Respondent vide an email dated 13.07.2020, which reads as follows:

*“In your last Email of June 9, 2020, you had sought Zydus’ help and understanding in giving Genesys the time needed to be able to repay the loan amount. Even though the loan amount was long overdue, keeping in mind the relationship between Zydus and Genesys, in our Email of June 26, 2020 we agreed to the said request and sought a committed*

*timeline for repayment of the loan amount, but not beyond July 7, 2020.*

It is also averred that the due date for loan repayment is treated as 07.07.2020, it is evident that the present application is barred under Section 10A of the Insolvency and Bankruptcy Code (Amendment) Ordinance (No.9 of 2020) dated 5 June 2020 (Ordinance) and subsequently vide Act No.17 of 2020, Sec.2 (w.e.f. 05-06-2020).

- xvi. It is averred that the present application appears to have been filed with malicious intent rather than as a genuine case of insolvency resolution and hence it is submitted that the conduct of the Petitioner invites penalty under Section 65(1) of the Insolvency and Bankruptcy Code, 2016.
3. The averments made in the Additional Counter Affidavit filed by the Corporate Debtor are described hereunder:
- i. The Respondent denies all the averments made by the Petitioner except those which are specifically admitted herein.
  - ii. It is averred that the Business Loan Agreement dated 28.09.2018 stipulates events of default in the Clause 7 and Clause 7.2 provides as follows:

*Clause 7.2: The company fails to pay any sum payable under this Agreement, unless it is failure to pay is caused solely by an administrative error or technical problem and payment is made within three (3) business days of its due date”.*

iii. It is averred that the above said event has occurred only on 07.07.2020, assuming the loan is due and payable, after the expiry of the due date prescribed by the Petitioner vide email dated 26.06.2020.

iv. It is also averred that Clause 7.18 of the BLA dated 28.09.2018 provides as follows:

*Clause 7.18 – At any time after an Event of Default has occurred, the Lender may, by notice to the Company: (a) cancel all outstanding obligations of the Lender under this Agreement whereupon they shall be immediately be cancelled; and/or (b) declare that the Loan Amount (and all accrued interest and all other amounts outstanding under this Agreement) is immediately due and payable whereupon they shall become immediately due and payable; and/or (c ) declare that the Loan Amount be payable on demand, whereupon it shall become immediately payable on demand by the Lender. The company is issuing a Demand Promissory Note to the Lender as attached at Schedule-B, which may be presented by the Lender at any time in the Event of Default.*

v. It is averred that in pursuance to Clause 7.18 of BLA, the Petitioner demanded vide letter dated 13.07.2020 to make the entire loan amount including interest on or before 20.07.2020. The extract of the relevant paragraph reads as under:

*“The conduct of Genesys thus amounts to an Event of Default under Clause 7 of the Loan Agreement and we hereby declare that the Loan Amount is due and payable immediately and demand Genesys to make the repayment of the entire Loan Amount, including interest payable thereon, on or before July 20, 2020 failing which Zydus would be constrained to*

*proceed with legal enforcement of its rights under the Loan Agreement, Deed of Corporate Guarantee, deed of Personal Guarantee and the Demand Promissory Note, all dated 28<sup>th</sup> September, 2018 without any further notice”.*

- vi. It is averred that pursuant to the demand notice dated 13.07.2020, the present Company Petition has been instituted and it is evident that the declaration as contemplated and mandated as per the BLA dated 28.09.2018 of the debt to be due and payable happened only on 13.07.2020 and hence this Company Petition is barred as per Section 10A of the Insolvency and Bankruptcy Code (Amendment) Ordinance (No.9 of 2020) dated 5 June 2020 (Ordinance) and subsequently vide Act No.17 of 2020, Sec.2 (w.e.f. 05-06-2020).
4. The averments of the Rejoinder filed by the Financial Creditor are briefly described hereunder:
- i. It is averred that the present petition is maintainable and is entitled to be allowed as the Respondent on its own stance admitted the contents of BLA and the receipt of loan amount of Rs.10.00 crores on the terms and conditions of BLA.
- ii. In reply to para 3 of the counter, it is averred that on 02.02.2016, M/s. Zydus Healthcare Limited was incorporated and was allocated CIN No. U24230GJ2016PLC085929. A copy of the Certificate of Incorporation of Zydus Healthcare Limited with CIN: U24230GJ2016PLC085929 as available on the website of Ministry of Corporate Affairs is annexed as **Annexure-1**. The entity, Zydus Healthcare Limited got merged into another corporate entity German Remedies Limited vide order dated 23.03.2016 passed by the Hon'ble High Court of

Gujarat in Company Petition No.62/2016 approving the scheme with the appointed date 02.02.2016. A copy of the Order is annexed as **Annexure-2**. Consequent to the Order dated 23.03.2016, the entity mentioned in para 1 of this Rejoinder ceased to exist under the Scheme of Amalgamation as approved by the Hon'ble High Court of Gujarat. The Transferee Company German Remedies Limited continued to exist thereafter. The name of German Remedies Limited was changed to Zydus Healthcare Limited having CIN U51900GJ1989PLC079501, which is presently existing now. A copy of Certificate of Incorporation having CIN U51900GJ1989PLC079501 is annexed as **Annexure-3**. The Corporate entity having CIN U24230GJ2016PLC085929 was the predecessor of the present Petitioner with CIN U51900GJ1989PLC079501. It is averred that in view of the submissions made, the objection raised by the Respondent are not sustainable and ought to be discarded.

- iii. It is averred that the contents of Para 4 of the Counter Affidavit are incorrect and are denied. The loan was advanced by Zydus Healthcare Ltd. having Corporate Identification No. U51900GJ1989PLC079501 and the same was accepted by the present Respondent. It is also averred that the Respondent had complete knowledge right from the inception that Zydus Healthcare Limited which is the Petitioner herein is the entity which extended the loan and extended BLA and there is no other entity named Zydus Healthcare Limited having registered office at Ahmedabad. There was no mistake of fact even at the time of execution of BLA nor at present between the parties with respect to Corporate entity which has extended loan under BLA. The objection is frivolous and without any basis. The petitioner has the locus standi to institute the present company

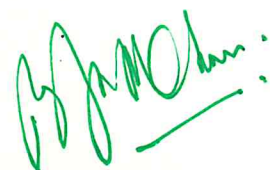
petition which is liable to be allowed and the financial debt is due and payable by the Respondent to the Petitioner.

- iv. It is averred that para 5 and 6 are misconceived, incorrect and hence denied. The Respondent is trying to evade its liability of repayment of the loan amount by raising insignificant and trivial issues which are a result of the inadvertent mistake made by the counsel of the Petitioner while drafting the present petition. It is also averred that there is no factual dispute in the present petition and the Respondent cannot be allowed to dodge its liability to make repayment of all sums of money due to the Petitioner in terms of BLA by raising such inconsequential objections. A copy of the PAN Card of Petitioner is annexed as **Annexure-4** of the Rejoinder.
- v. It is averred that the contents of para 9 of the counter are incorrect and hence denied and also averred that Section 60(2) and 60(3) of the I&B Code, 2016 permits simultaneous proceedings against the Corporate Debtor/Principal Borrower and the surety. It is relied on the Order issued by the Hon'ble NCLAT in the matter of **State Bank of India vs. Athena Energy Ventures Pvt. Ltd. Company Appeal (AT) (Ins) No.633 of 2020 (2020 SCC Online NCLAT 774)** held that whilst setting aside the Order dated 04.03.2020 passed by Hon'ble NCLT, Hyderabad in **Athena Energy Ventures Pvt. Ltd. vs. State Bank of India BEARING cp(ib) No.466/7/HDB/2019** held that *“in the matter of guarantee, CIRP can proceed against Principal Borrower as well as Guarantor. The relevant extract of the Order is shown at page 5& 6 of the rejoinder.*

- vi. In reply to para 10 of the counter, the contents are incorrect and are denied. The petition discloses all the material facts and particulars relevant for the purpose of the present petition and no material information has been suppressed. The inquiry in the present Company Petition is only limited to the fact of commission of default by the Corporate Debtor i.e. the present Respondent.
- vii. In reply to para 11 of the counter, it is averred that the Respondent is making an attempt to mislead this Hon'ble Tribunal by referring Term Sheet dated 02.07.2018 which is purportedly signed by the present Respondent and Cadila Healthcare Limited. On perusal of the document, there is no reference of Zydus Health Care Ltd. i.e., the present Petitioner and even otherwise, the same is non-binding. The alleged Term Sheet dated 02.07.2018 lost its validity after 07.08.2018. Thus, it is not relevant for the purpose of the adjudication of the present company petition and should be discarded. The alleged valuation of the Respondent at Rs.475 crores and the alleged proposal of investment was never made by the present petitioner.
- viii. It is also averred that Zydus Healthcare Limited is not a party to the alleged Term Sheet and never executed any Subscription and Shareholder's Agreement and the relationship between the Petitioner and the Respondent is governed by the BLA and there is no other understanding.
- ix. In reply to para 12 of the counter, the contents are incorrect and are denied as being irrelevant and false. The e-mails dated 03.08.2018 and 16.08.2018 is of no relevance for the present petition which are deliberately cited by the Respondent to mislead this Hon'ble Tribunal.



- x. In reply to para 13 and 14 of the counter, the contents are incorrect and denied. The e-mails dated 13.04.2019 and 17.04.2019 do not constitute any contract to form waiver against the liability under BLA. Therefore, these emails are liable to be rejected. The e-mail dated 28.05.2019 does not have any bearing on the present subject matter in the current proceedings before the Hon'ble Tribunal.
- xi. In reply to para 15 of the counter, it is averred that the Respondent has admitted the execution of BLA and receipt of Rs.10 crores under the terms and conditions of BLA. The reference of Term Sheet by the Respondent and the discussions for prospective business between Cadila Healthcare Limited and the Respondent is of no consequence for the purpose of present matter.
- xii. In reply to para 16 of the counter, it is averred that the Respondent admits the receipt of loan and the execution of BLA and the other contents are misconceived.
- xiii. In reply to para 17 of the counter, it is averred that the contents are incorrect and are denied. There was no verbal agreement between the Petitioner and the Respondent as alleged. The Petitioner never executed any agreement for the proposed investment of Rs.203.57 crores against the 30% stake as alleged and such admissions are misconceived and incorrect.
- xiv. In reply to para 18 of the counter, it is averred that the contents are incorrect and are denied. The allegation with regard to various process optimization and establishing the 'Titler' and other equity investments are false because Petitioner never executed any agreement other than BLA.



- xv. In reply to para 19 of the counter, it is averred that the contents are incorrect and are denied. It is also denied that the Petitioner had no concluded agreement to offset the loan of Rs.10 crores against the alleged investment of Rs.230 crores and all the three amendments to BLA does not support the allegations of the Respondent as the same were duly executed by both the parties.
- xvi. In reply to para 20 of the counter, it is averred that the contents are incorrect and are denied. The default was committed by the Respondent on 30.09.2019. This is the admitted fact and the denial of the same by the Respondent is malafide. There was no agreement concluded between the parties with respect to investment of Rs.230 crores and for the search of alternate investor.
- xvii. In reply to para 21 of the counter, it is averred that the contents are wrong and incorrect. The BLA and Deed of Guarantee are duly stamped and are validly executed. Both the parties are the author of the documents and have executed the same with the legal advice believed to be correct. The objection is misconceived and is liable to be discarded.
- xviii. The contents of paras 22 & 23 of the counter, it is averred that the contents are incorrect and are denied. The default was committed on 30.09.2019. The email communications dated 26.06.2020 and 13.07.2020 are reminders for the long overdue payments. These follow ups and reminder communications does not extend the due date. The respondent is the signatory and author of the BLA and its subsequent amendments. There is no justification on its part to take the plea of lack of information when the BLA is admitted document by the Respondent. Even otherwise, in



emails dated 09.06.2020 and 20.07.2020, the payment liability towards principal and interest up to the date has been unequivocally admitted as per the provisions of BLA. The repayment date remained as prescribed under BLA as amended from time to time and there was no extension of the same. The provisions of Clause 3 of BLA could be amended by way of duly executed written amendment agreement as per the contractual discipline of clause 9.9 of the BLA. No amendment was executed except 1<sup>st</sup> amendment dated 14.01.2019, 2<sup>nd</sup> amendment dated 01.04.2019 and 3<sup>rd</sup> amendment dated 01.06.2019 whereby the final repayment date was given under clause 3.1 as 30.09.2019. Therefore, the contentions raised are malafide and only to defraud the Financial Creditor i.e., the Petitioner herein.

- xix. In reply to para 24 of the counter, it is averred that the present proceedings do not fall within the ambit of restriction under Section 10A. Therefore, the present petition is maintainable and is liable to be allowed.
- xx. In reply to para 25, 26, 27 & 28 of the counter, it is averred that the contents are incorrect, false and are denied as the present petition is legally maintainable and the allegations and objections raised by the respondent are actuated by malafide and the present petition is liable to be allowed with the cost of legal proceedings.
5. We have heard the counsel for Financial Creditor / Petitioner and the Counsel for Corporate Debtor / Respondent herein and perused the whole case records as well as documents submitted by both the parties. It is a fact that the Business Loan Agreement (BLA) was entered into between the parties i.e., Zydus Healthcare Limited / Financial Creditor with Genesys



Biologics Private Limited/Corporate Debtor on 28.09.2018 whereby the Financial Creditor advanced a loan of Rs.10.00 crores to the Corporate Debtor on the basis of the terms & conditions of the BLA. Further, a Deed of Corporate Guarantee was executed in favour of the Financial Creditor by Amicus Formulation (India) Pvt. Ltd./Corporate Guarantor and a separate Deed of Personal Guarantee was also signed by five persons, who are also directors of the Corporate Debtor, namely – 1. Mr. Rajendra Rao Juvvadi; 2. Mr. Vamshider Rao Joganpally; 3. Mr. Venkat Reddy Yelma, 4. Mr. Venkata Krishna Rao Dasari; and 5. Mr. Tulsi Ramu Chatadi (“Personal Guarantors”).

6. We also observed that the BLA was amended on several times in view of the governing circumstances. On 1<sup>st</sup> amendment of the BLA on 14.01.2019 whereby the date of repayment was extended upto 31.03.2019. Thereafter, vide further amendments dated 01.04.2019 the repayment of loan was extended upto 31.05.2019 and finally repayment of the loan amount was extended vide 3<sup>rd</sup> amendment dated 01.06.2019 till 30.09.2019.
7. It is also a fact that the Corporate Debtor has committed default of repayment of loan amount on 30.09.2019. The Financial Creditor was assured during the month of October and November, 2019 by the Corporate Debtor for repayment of the outstanding along with interest. However, it is observed that no amount was repaid by the Corporate Debtor and the Corporate Debtor through e-mail dated 20.07.2020 and 21.07.2020 requested the Financial Creditor for accommodation in repayment of loan amount. The printouts of the various emails exchanged between the parties are also enclosed.



8. We observed that the Financial Creditor is entitled to recovery of loan amount of Rs.12,41,50,950.96 which includes the principal loan amount of Rs.10,00,00,000/- and a compound interest of Rs.2,41,50,950.96 calculated @ 12% per annum from 03.10.2018 to 20.08.2020. The petitioner is also submitted a tabular statement containing the details of the Ledger Account of the Corporate Debtor as **Annexure A-9** of the application.
9. It is also observed that the Corporate Debtor did not make any repayment of principal and interest amount towards the discharge of financial debt of Rs.12,41,50,950.96 claimed by the Financial Creditor till the date of the application. Hence, this application was filed.
10. It is the case of the Corporate Debtor that the Company Petition is filed by an unrelated Corporate Entity and demanding repayment of the loan based on the Business Loan Agreement dated 28.09.2018. The Counsel for Corporate Debtor contended that the original documents were signed by M/s. Zyduz Healthcare Limited / Financial Creditor represented by Mr. Anil Matai in the capacity of Managing Director and Mr. Sanjay Kumar Gupta in the capacity of Company Secretary having CIN: U51900GJ1989PLC079501. However, the Company Petition is filed by a Corporate Entity having different CIN U24230GJ2016PLC085929 as evident from the Form-I filed to initiate Corporate Insolvency Resolution Process against the Respondent and where Mr. Anil Matai is not a Managing Director. As such, this company petition may not be maintainable.
11. The Counsel for Respondent would contend that the Respondent herein does not have relation with the petitioner herein and the present petition is instituted without any locus standi and is liable to be dismissed in limine with exorbitant costs.



12. The counsel for corporate debtor would also contend that the company petition is incomplete and filed on or after 03.10.2020 as evidenced from the notary stamp on the verification affidavits. He also contended that as per IB (AAA) (Amendment) Rules, 2020, any company petition filed on or after 24.09.2020, the Financial Creditor is required to serve a copy of the petition to Insolvency and Bankruptcy Board of India and enclose the proof of service as Annexure-5 but the petition has not complied with the process laid down.
13. It is also the case of the Corporate Debtor that Petitioner herein has filed an application for initiating insolvency proceedings against the Corporate Guarantor / M/s. Amicus Formulations India Private Limited bearing CP(IB) 362/7/HDB/2020 and the same is pending before the NCLT, Hyderabad Bench-II.
14. The learned counsel for Corporate Debtor would contend that the parallel proceedings of the Corporate Debtor and Corporate Guarantor before two different adjudicating authorities will lead to multiple proceedings for the same debt and if succeeded will result in initiation of two insolvency proceedings against the same debt which is not acceptable under law.
15. The Counsel for Corporate Debtor would contend that the Corporate Debtor incorporated in the year 2014 entered into a proposal with the parent company of the Petitioner, M/s. Cadila Healthcare Limited in the year 2017 with a draft letter of intent being exchanged on 24.03.2017, which ultimately culminated into a term sheet dated 02.07.2018 containing the principal terms for investment into Respondent. It is also submitted by the Respondent that as per the Term Sheet, the Respondent is valued at Rs.475 crores and the Petitioner herein has agreed to invest Rs.203.57 crores by subscribing 30% of the equity stake



in Respondent. The conditions precedent for the investment is that a Subscription Agreement and Shareholder's Agreement is executed between Respondent and parent company of the petitioner and the said investment would be used for operational expenses and for construction of insulin biosimilar manufacturing facilities and conduct clinical trials to get approval of the Company's products in different markets.

16. The counsel for Corporate Debtor would contend that vide emails dated 03.08.2018 and 16.08.2018, the parent company of the petitioner has shared the Subscription Agreement and Shareholders Agreement establishing the intention to go forward with the investment promised by the parent company of the petitioner. The Corporate Debtor has submitted the proof of e-mails to that extent.
17. The counsel for Corporate Debtor would contend that even the Business Loan Agreement specified by the end uses which would demonstrate the efficacy of the respondent's operations.
18. The counsel for Corporate Debtor contended that the parties never intended for the BLA to be enforced as a plain loan. Respondent required the said sum of Rs.10 crores and sought from Petitioner to finance the same, notwithstanding the fact that the requirement was in lieu of Petitioner's approach towards process optimization and establishing the titer.
19. The counsel for Corporate Debtor further contended that there is no default in the loan as the expense undertaken by the Respondent is at the instance of the Petitioner and the BLA was entered with an intention to set off against the investment of Rs.230 crores in Respondent and when there was no further interest shown by the Petitioner in investment, it was agreed that the loan is not required to be paid for a reasonable time

until an alternate suitable investor invests in Respondent. Due to Covid-19 pandemic, it has taken a longer time for the Respondent to find a suitable alternative investor. As such, he stated that there is no default and presently no debt is due.

20. The counsel for Corporate Debtor has also raised a contention that the Petitioner has relied on the documents such as Business Loan Agreements and Deed of Guarantee cannot be relied upon as the same are insufficiently stamped. Hence, they cannot be taken into account and the petitioner is put to strict proof of the same. Finally, the learned counsel for Corporate Debtor has stated that the Petitioner has not approached the Hon'ble Tribunal with clean hands as it has suppressed information that the repayment date of loan fell on 07.07.2020 and instead mentioned that the date of repayment of loan fell on 30.09.2019.
21. As the instant application before the due date of the repayment, the company application may be dismissed and finally the Corporate Debtor has contended that the present application appears to have been filed with malicious intent rather than as a genuine case of insolvency resolution and hence it is submitted that the conduct of the Petitioner invites penalty under Section 65(1) of the Insolvency and Bankruptcy Code, 2016 and hence may be dismissed.
22. We have gone through the submissions made by both the parties and gone through the records before us and we find that there is a Business Loan Agreement entered into between both the parties and whereby the Financial Creditor advanced a loan of Rs.10 crores on the basis of the terms and conditions of BLA. The BLA was amended several times in view of the governing circumstances and finally by way of final amendment dated 01.06.2019, the date of repayment of the loan amount was



extended upto 30.09.2019 by mutually agreed terms by both the parties. However, the Corporate Debtor committed default in repayment of loan amount on 30.09.2019 under the provisions of Clause 7 of BLA.

23. Further, we observed that the contention raised by the Corporate Debtor regarding the insufficient stamp duty and raising a contention that this is an investment not as a loan is not tenable in the light of the BLA entered into between both the parties as regards the amount given to the Corporate Debtor. Accordingly, we are of the view that the Financial Creditor is entitled to a total sum of Rs.12,41,50,950.96 (Rupees Twelve Crores Forty-One Lakhs Fifty Thousand Nine Hundred Fifty and paise ninety-six only) which includes principal loan amount of Rs.10,00,00,000/- (Rupees Ten Crores only) and a compound interest of Rs.2,41,50,950.96 calculated @ 12% per annum from 03.10.2018 to 20.08.2020 and the interest accrued thereafter. Accordingly, we hereby admit this petition.

24. It is clearly observed that there is a financial debt which was given by the Financial Creditor and the Corporate Debtor has defaulted in making repayment as per the BLA amended several times in this regard. Accordingly, we are of the view that there is no case for the Corporate Debtor and hence the application is hereby admitted.



25. In the light of the above observations, we are of the view that there is a financial debt which was due and not paid. Accordingly, the application has been admitted.
26. Hence, the Adjudicating Authority admits this Petition under Section 7 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. 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.
  - iii. 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.



- iv. That the order of moratorium shall have effect from the date of the 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.
- v. That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- vi. The Financial Creditor proposed the name of Mr. Kranti Kumar Kedari as Interim Resolution Professional and he has given his consent in Form-2. But as per the Insolvency and Bankruptcy Board of India (IBBI) Website, Mr. Kranti Kumar Kedari Registration is valid upto 22.01.2021 only. As his Authorization for Assignment (AFA) is valid upto 22.01.2021, we will not be in a position to allot this case to the proposed IRP, Mr. Kranti Kumar Kedari as requested by the Financial Creditor.
- vii. 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 1<sup>st</sup> January, 2021 to 30<sup>th</sup> June, 2021 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints Mr. Kasa Venkata Ramanaiah having Registration No. IBBI/IPA-003/IP-N00066/2017-2018/10552, e-mail: [ramanaiahkasa@gmail.com](mailto:ramanaiahkasa@gmail.com) as Interim Resolution Professional and his AFA as per the Insolvency and Bankruptcy Board of India (IBBI) Website is valid upto 28.11.2021. The aforesaid interim resolution professional has no disciplinary proceedings pending against him. He shall file his written communication and all relevant



papers immediately before Registrar of this Tribunal but not later than two days.

- viii. The Petitioner is directed to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.
- ix. Accordingly, this Petition is admitted.
- x. Registry to send a copy of this order to the Registrar of Companies, Hyderabad for appropriately changing the status of the Corporate Debtor herein on the MCA-21 website of Ministry of Corporate Affairs.

  
**VEERA BRAHMA RAO AREKAPUDI**  
**MEMBER (TECHNICAL)**

  
**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

Syamala